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HISTORICAL TRIALS

(A SELECTION)

By the Late
SIR JOHN MACDONELL, K.C.B.

*Sometime King's Remembrancer and Senior Master
of the Supreme Court of Judicature*

Edited by R. W. LEE, D.C.L., with a Preface by
The Rt. Hon. LORD SHAW OF DUNFERMLINE, LL.D.
(NOW LORD CRAIGMYLE)

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DEDICATED TO THE MEMORY
OF
AGNES, LADY MACDONELL

PUBLISHERS' NOTE

THIS book is a reproduction, with the consent of the Oxford University Press, of seven of the late Sir John Macdonell's Lectures on "Historical Trials." The Lectures not reproduced deal with Mary Queen of Scots, Katharine of Aragon, Sir Walter Raleigh, and Les Grands Jours d'Auvergne.

PREFACE

A WEEK or two after Sir John Macdonell's lamented death Lady Macdonell informed me of a project to publish some of his papers and asked me to write a prefatory note for the volume. She indicated to me that she knew that I was the friend whom her husband would have selected for this duty. I could not but comply with this request, which has been repeated since Lady Macdonell's death with the same kind of honouring statement.

I valued greatly and benefited much by Sir John's friendship. From "new and old" he dealt me out his treasures, and I was over and over again impressed not only by the fullness but by the suggestiveness of his mind.

The word "jurist" is in these days apt to be lowered by loose and common use, but in Sir John Macdonell's case the title was earned in all its distinction. I place him in the first rank of the jurists of his time.

He was born in 1845 at Brechin in Forfarshire, Scotland. At seven years of age the father's home was shifted to Rhynie in Aberdeenshire. John was the second son, and they were a clever and scholarly family, the elder brother James becoming a well-known journalist.

The education was of the sort usual in Aberdeenshire, where for two generations at least two Bequests, known as the Smith and Milne Bequests, have stimulated the teaching profession in the ordinary schools. The Macdonells owed much to the Rev. George Stewart, one of those teachers. Looking back upon it, one can see that such teaching, falling upon the

son of a Highland Roman Catholic, Macdonell of Glengarry, and a Protestant mother, Allardyce of Dyce, had the best of chances. In walking with Sir John I have been often struck with his physical powers—and with what I would call his toughness—in body as well as in mind. As to both I give credit to race, and to an environment in his youth which included the climbing as a boy over the slopes of Benachie.

He went to Aberdeen University, achieving first-class classical honours there. Then we find him on the staff of *The Scotsman* newspaper in Edinburgh, but early bringing forth under his own independent pen several books—*A Survey of Political Economy*, *The Land Question, with particular reference to England and Scotland*, and, after he had gravitated into Law in the Middle Temple, *The Law of Master and Servant*. He did well at the English Bar. Without knowing it personally I can import into his work those qualities of thoroughness and accuracy which stamped all he did in later life. He became a Master of the Supreme Court, King's Remembrancer, the responsible editor of the *Judicial Statistics*, a Knight, a K.C.B. He knew more Civil Law than probably any number of his contemporaries, but the University of Aberdeen alone honoured itself by recognizing him as Doctor of Laws. This was in 1892, and in 1901 he was appointed Quain Professor of Comparative Law at University College, London; and he was for years Dean of the Faculty of Law there.

His public work and value were acknowledged by the very powerful Committee of distinguished Judges, etc., who were responsible for the issue of the *Reports of State Trials*, that new series 1888 to 1891, which contains certain interesting proceedings as to Queen Caroline, Daniel O'Connell, and William Cobbett. Macdonell became their Secretary and Editor.

In these later years he was in the forefront of persons of authority with regard not only to judicial statistics

and proposed judicial changes and reforms. He seemed to be set to everything where his faculty for accurate inquiry and compilation could be utilized. He was sent to take evidence in South Africa in connexion with the Royal Commission on Shipping Rings (1906-9). He was Chairman of that important Committee which involved extraordinary research and industry, the Committee of Inquiry into the responsibility of Germany for Crimes by its Armed Forces on Land and Sea and in the Air. The Report was framed. Shall it ever see the light? Perhaps not. And this may be well; although history in a later age may grow restless over this oblivion.

In notices regarding Sir John I think too little has been made of his linguistic accomplishments. He appeared to use Latin, French, German, and Italian not only with facility but with a very acute power of gathering from those sources matter relevant to any broad juridical survey. He loved forming Societies which had a turn of this kind. He was one of the founders of the Grotius Society, which still lives, and of the Society of Comparative Law, whose journal is probably the most widely useful of any legal journal in the Empire. This great list may be concluded by a reference to his editing with Mr. E. Manson *The Great Jurists of the World*.

In the course of a busy official life he was able to compile the papers which are found in this volume. A perusal of them is sufficient to show not only those qualities of research and accuracy to which I have referred, but the breadth and penetration with which his survey of great historical events was conducted. It is not for me to presume to review this book, but from the paper on the Trial of Socrates onward one gets glimpses of that panoramic survey by which he is able to illustrate the administration of justice so called in one state and epoch with that administration in another. One learns from his pages to have a new respect for those who see in the evolution of such

administration vivid tests of the advance of culture and the progress of civilization itself.

Having shown—as he has to show in the majority, one would almost say, of the instances which the volume presents—that the Trial of Socrates was no trial at all, but simply an impeachment of unsettling views, he exclaims: “Had Socrates been tried in this country at any time before the middle of last century, would his treatment have been much better? In Tudor or Stuart reigns he would have been charged for high treason or blasphemy or misdemeanour of some kind, browbeaten by the law officers prosecuting, and scolded by the presiding Judge as a pestilent nuisance in the State, and his last words before a cruel death might have been cut short or drowned in the roll of drums beneath the scaffold. Let us picture his coming before an English or a Scotch Judge at the end of the eighteenth or the beginning of the nineteenth century—before an Ellenborough who tried Hone, or a Braxfield who tried Muir and Margarot; he would have been belaboured with pompous platitudes or subjected to coarse ribaldry, and his conviction would have been certain.”

This book may be said to be a recondite and powerful answer to the conundrum, “When is a Trial not a Trial?” “The Trial of the Knights Templars” is a record from many countries of proceedings which in every case were inspired by cupidity against the wealth which the Order had accumulated, and when royal and papal authority combined to turn the procedure of the Inquisition and its powers of torture and organized incrimination by interrogatory into the mockery of testimony according to all modern ideas.

This upsetting of true judicial process, or rather the substitution therefor of organized political hatred under a semblance of judicial forms, this is the broad fact which these pages bring forth,—fact upon fact, to the complete satisfaction of every fair mind. The views, for example, of De Quincey in the last genera-

tion and of George Bernard Shaw in this generation on the subject of Jeanne d'Arc could not be more convincingly confirmed. But it is well to have here before us the record of her Re-Trial, practically by the same authorities, and to note how in cooler blood and more accessible to shame they expunged the first trial from the Records of Justice.

Another instance where, alas! no official Re-Trial has helped historical matter. As to Mary Queen of Scots, the paper in this volume¹ (I have personally gone over a good deal of this ground) does, I think, justly bring to shame the prejudices of both Kingsley and of Froude; and I agree with every word of Macdonell's conclusion: "Her defence and whole demeanour were queenly, though Mr. Froude may sneer at it as acting. It is too the spectacle of a great intellect combating a host of astute politicians and lawyers eager to condemn and make away with her. . . . Let us sum up the chief facts in the proceedings: a commission issued which virtually assumes her guilt; proposals to poison her; these not carried out; the substitution of the semblance of a trial before a court composed in the main of officers of State; no witnesses called against her; no precise charge formulated; refusal to assign her an advocate; refusal to let her have access to her papers; letters put in evidence against her, but no evidence given of their authenticity; no proof of their actual delivery to her; confessions or admissions used without the production of the persons who made them, as she demanded; disregard of the provision of the 27th Elizabeth as to two witnesses. What is to be said of it? Mr. Hosack speaks of it as the 'most disgraceful of all the judicial iniquities which disgrace the history of England.' " Upon this Sir John Macdonell, the patient and most judicial investigator, quietly observes:—"I am inclined to think he is right." So am I.

The limits of a preface have been far exceeded, but

¹ Omitted in this reprint.

I desire in conclusion to call the attention of the reader specially to the so-called Trials of Bruno and of Galileo. He will thus get in clear illustration those defects of trials which divorce them from being instruments of pure justice. That is the secret. It has become unfashionable in Courts of Law to speak of them as Courts of Justice. It is thought that this is making an appeal to something which may mislead the law. Well, Macdonell had seen law and justice in grips over many generations. He knew what party influence was, inflammatory of passion, distorting truth. But he was no party man, and his exposures of the errors and crimes of ecclesiastical methods are as calm and cogent with Calvin, as he hounded down Servetus, as with the papacy, when it drowned the light in the days of Galileo. Crying out in revolt against prepossessions and prejudices which were the real grounds of trial and gave justice no chance, he makes a noble citation from the Laws of Manu worthy to rank with Isaiah's repeated appeals for righteousness.

His best service, in my opinion, in this book is to show how the perversion of trial and of justice have been unhappily in the past caused by fear. "Fear," says he, "brings back the primitive conception of the functions of courts; not necessarily, or indeed often, personal fear, but fear of changes; fear on the part of the upholders of the old order; fear of the effects of the discoveries of new truths; fear of emerging into the full light. Where such fear is justice cannot be; a court becomes an instrument of power; judges are soldiers putting down rebellion; a so-called trial is a punitive expedition or a ceremonial execution—its victim a Bruno, a Galileo, or a Dreyfus."

SHAW OF DUNFERMLINE

9 BOLTON GARDENS,
LONDON, S.W.5
27 April 1927.

EDITORIAL NOTE

THE subject-matter of this volume consists of lectures given by the late Sir John Macdonell, as Quain Professor, at University College, London, in the years 1911-13. Many proposals for publication were made at the time and afterwards. But pressure of other work led to postponement of the task of authorship. Then came the war, followed by the heavy burden of a Royal Commission. Considerations, not at all of a self-regarding nature, delayed Sir John's retirement from his official functions longer than he desired. Only a few months, and those passed in failing health, intervened before his death on 17 March 1921.

When Sir John's papers came to be looked through, these lectures, more than any other part of the accumulated material, seemed fit for publication. They appeared to be very characteristic of the author's modes of thought and calculated to appeal to a wide circle of readers. The work of revision was entrusted, in the first instance, to Mr. F. H. Lawson, M.A., Fellow of Merton College, who was admirably suited for the task. Circumstances have prevented him from being associated with the editor in the later stages of reading and correcting the proofs. For this reason it would scarcely be fair to attach to him, except to the extent indicated, the responsibility of joint-editorship. But the editor wishes to record the great assistance which he has derived from Mr. Lawson's wide range of historical and legal knowledge.

The fact that a considerable number of years has elapsed since these lectures were delivered no doubt

presents a difficulty. The editor has asked himself whether he should furnish a bibliography of what has been written since on the various trials comprised in the series. But, upon consideration, this course has not been adopted. Sir John Macdonell was concerned not so much with the precise and detailed investigations which interest the historian. His object was rather to make a contribution to the history of legal procedure, as a chapter in the history of thought and of civilization. It is believed that thus regarded the studies of historical trials contained in this book will be found to have an abiding value and significance.

It only remains for the editor to thank Lord Shaw of Dunfermline for most kindly writing a Preface to this volume.

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HISTORICAL TRIALS

I. SOCRATES

SOME time ago I lectured upon the most important systems of legal procedure. In continuation of that course I propose to select as typical certain trials which have attained world-wide fame, and which are fairly representative of the systems to which they belong. There does not exist, so far as I know, any adequate history of legal procedure; any systematic account of all the ways in which men have now or in the past sought to settle finally questions of right and wrong, questions as to property, questions of guilt and innocence. There are indeed many elaborate and admirable treatises upon legal procedure in different countries. But few writers have attempted to group the common facts and to give a comparative view of the whole subject. I can think of no attempt of the kind except certain chapters by M. Fustel de Coulanges. The materials are scattered far apart; but they exist in abundance, and some day they will be formed into an edifice. I am convinced that the subject lends itself to scientific treatment. Whether it be ordeal in an African village or in medieval times, trial by battle as it once existed over a great part of Europe, the rough-and-ready justice of a mining camp, or the elaborate procedure of an ecclesiastical court, the various modes fall into a few groups. Some of these I described and attempted to classify in previous lectures. It may be an aid to anyone undertaking such a task as I indicate to describe with some minuteness certain trials illustrative of the chief systems of procedure.

Let me state clearly what I intend to do, and what I shall not attempt.

A trial is in its substance a struggle, a battle in a closed arena. It is a shock of contending forces, a contest which may arouse the fiercest passions. The issues involved in the trial, say of Socrates, of Jeanne d'Arc, of Bruno, or Calas, or Dreyfus, are among the deepest and greatest known to humanity. I would not, even if I could, deal with them. They are above my task. They are for the philosopher, the historian, the moralist. I approach these trials solely as a lawyer; examining the documents as a lawyer; trying to find answers to questions which a lawyer must put; necessarily passing over many of the greatest aspects of such trials, but also perhaps adverting to some apt to be ignored. I want to look at these cases just as if they were about to come into Court, or had just been decided; to view them as legal phenomena, part of the legal history of men, not the least part of the long story of the evolution of the human conscience. Accordingly I shall advert particularly to such points as these—the nature of the Court before which the trial took place, the exact charge against the accused, the procedure, the evidence, the interlocutory proceedings, the sentence and punishment.

For the close examination of trials I claim some advantages. Often a trial is the one luminous point in darkness, the one opening in an otherwise blank wall between us and the past. It takes one outside the formulæ of the text-books. Faithfully reported, a trial is a living picture; it brings us nearer to life than the best literature; you hear the voices; it is life itself. Certainly for studying and understanding an ancient or foreign legal system nothing is more instructive than acquaintance with an actual trial. You may read in Gaius, Beaumanoir, or Bracton, texts descriptive of procedure, and many points will remain in obscurity which the records of a single trial illuminate.

I must own that one obstacle to such a study stands in the way. No entirely complete report of any ancient trial exists. I mean complete in the sense in which are our legal reports; no verbatim record of all the evidence, together with the interlocutory remarks of judges or jurymen. Rarely are all the speeches given in full; generally only one is preserved; it is much if we have a meagre account of the course of proceedings and the result. All that we know may be derived from an advocate speaking as such or from a rhetorician or an historian who was not a lawyer. Conceive the task of unravelling the merits and issues in the trial of Warren Hastings solely from Burke's heated rhetoric. Imagine the ideas of posterity as to the Parnell Commission, if the only record were Sir Charles Russell's speech, supplemented by an account to be found in a partisan history. There is rarely any clear statement of the points of law raised and decided. There is nothing corresponding to our wonderful series of Year Books, or to our Reports of the State Trials, or to the verbatim reports which for some two centuries we have had of all the chief trials. As to the medieval trials, matters are still worse; men were tried, so to speak, in the dark and without publicity, and the only record may be a few formal documents.

I take as my subject certain great historical trials. Now, no two persons will agree as to what are the great trials of history. Everyone would draw up his own list according to his country and the bent of his interests. But all lists would indeed contain certain trials, such as that of Socrates. Probably all would include that of Jeanne d'Arc. I begin with the former. I totally disclaim, let me say at once, the idea of discussing this trial in all its aspects, or even in its chief aspects. That is far beyond my scope. That has been done many times. Each generation has given its judgments upon an event which the lapse of more than two thousand years has not made

less memorable. For our generation Grote, Zeller, Gomperz, and Harnack have spoken. Each generation has formed a conception of its own as to the true Socrates. There are indeed many presentations of Socrates, and to-day scholars are busy in their efforts to exhume the real Socrates, and to distinguish the actual figure from that portrayed by Plato and Xenophon. With all that I am not concerned. I regard the trial solely from a legal point of view, examining it as a landmark in the history of procedure and as a typical example of an important system. The date was 399 B.C., when Socrates was seventy years of age or thereabouts, after he had filled several offices in his city, and some twenty-five years had passed since he was ridiculed and satirized in *The Clouds*.

What were the circumstances and the characteristics of the time? It was a time of unrest, uncertainty, instability, and rapid changes. The oligarchy, or tyranny, which followed the war was at an end and democracy had lately been restored (403 B.C.). Athens had "passed in the course of a few months through every stage of a ruthless terrorism."¹ It had been liberated from a vile despotism. Within a few years four great changes in the constitution had taken place. It was a time of exiles and enforced emigrations, and, as we should describe them, State prosecutions; emigrations which recall those in the Stuart times with us, or of the French *émigrés* in the eighteenth century.² It was a time of reverses, of falling power, military, naval, and economic; there was the memory at once of vanished supremacy and of recent disasters. It was a time of the entrance of new beliefs and ideas; and, as incident to such a

¹ E. Curtius, *The History of Greece* (translated by A. W. Ward), iv. 69.

² Hermann Köchly, *Akademische Vorträge und Reden*, i. 328. It is noteworthy that it is the year in which Plato withdrew to Megara, whither Lysias had fled in 404 B.C.

juncture, there was a feverish desire to preserve the old Hellenic life, the traditions of the past, the belief in the gods of men's fathers and the old rules of life; a time of sensitiveness and suspicion.¹

It is not unimportant to note, though I have not seen the circumstance adverted to, that the trial of Socrates for impiety took place about the same time as that of the orator Andocides upon a somewhat similar charge. It was, too, a period in which there were efforts to establish and preserve peace and order. An amnesty had been granted for all offences committed before the archonship of Euclides, a measure of moderation rare, if not unparalleled.² Measures had been taken to revise and codify the laws and to prevent the hasty passing of special laws against individuals. There were efforts to create, in modern phrase, a *Rechtsstaat*.³ All historians have attempted to depict the peculiarities of that time of unrest and tension and reaction, none more luminously than Curtius.

Such were the circumstances in which the charge was brought against Socrates. Now what was the course of procedure and how far did it resemble an English trial? And first, what was the tribunal? It must be understood that there was no class of professional, permanent judges. Ancient democracy did not know such. Nor did ancient aristocracy; the Roman law was evolved and perfected without a permanent judicial body. At Athens it was conceived that every citizen of mature years was fit to be judge. Every year 6,000 of the age of thirty and upwards were chosen by lot. These 6,000 were the judiciary. They sat in ten sections or classes or committees, the number of which varied from 200 to 2,000; in this case it was probably 501. There was

¹ Curtius, *op. cit.*, iv. 70.

² Köchly, i, 346.

³ Adolf Menzel, *Untersuchungen zum Sokrates-Processe, Sitzungsberichte der Philosophisch-Historischen Classe der K. Akademie der Wissenschaften*, CXLV (Wien, 1903), ii. p. 32.

also no sharp separation—it is essential for the understanding of ancient trials to realize this—between the judicial and the legislative assembly; such precise division of powers as we know is a modern conception. Theoretically the ecclesia was larger; any citizen above twenty might there speak and vote. But in fact the attendance at the legislative assembly was generally less than the actual size of the judicial assembly. The Court was nearly the size of our House of Commons; and you are to think not so much of our Courts, but rather of a public meeting or of the House of Commons—a paid House of Commons—as the tribunal. The magistrate who presided had little power; apparently he could not vote. At every turn you find traces of trials being before a popular assembly rather than a Court, in fact, before a crowd rather than a jury; a crowd with its well-known weaknesses, liable to sudden gusts or contagions of feeling; excitable, fickle,¹ and, let me add, a large crowd in a very small community with all the necessary consequences—strong influence of local and temporary feeling; knowledge by the judges of the parties, and often, probably, preconceived opinions as to the facts, and the certainty that the judges had heard much local gossip; no possibility of a change of venue and practically no appeal—absence of some of the conditions essential, we should say, to a fair trial. It was hardly possible to exclude politics when every judge or juror was a member of parliament. Justice had at one time been administered aristocratically, the Archon decided disputes. But the judicial power had passed entirely to the body of the people. Jefferson's idea of a popular judiciary had been realized. The Athenian people had taken the step which the extreme representatives of modern democracy have sometimes threatened to take, and which, for aught you or I know, may be one of its

¹ Georges Perrot, *Essais sur le droit public et privé de la république Athénienne—Le droit public*, p. 231.

future developments; to quote a French writer: "Justice was an integral part of the political organization; the people, having attained the sovereign power, gave first place to the tribunal of the Heliasts."¹ We shall not see things aright nor shall we be fair to what was done in 399 B.C. if we do not think of the trial as resembling an impeachment before a legislative body rather than proceedings before an English jury.

Each of the jurymen received his two tablets of bronze, with one of which he was to record his vote of condemnation or acquittal. Each of them took an oath, probably two oaths. Modern scholars are not agreed as to the exact form. But probably it ran somewhat thus: "I shall vote in conformity with the laws and with the decrees, those of the people of Athens and the Senate of 500; in cases which the legislature has not foreseen I will do what is just, not guided by fear or authority; I shall vote only on the questions submitted to the Court; I shall listen with attention to accuser and accused, the plaintiff and the defendant; I swear it by Zeus, by Apollo, by Demeter. If I am true to my oath, may my life be long. If I perjure myself, a curse be on me and my family"—an oath as solemn as that gabbled off in our Courts of Law, and one which was a precise monition of the perils to which a popular tribunal is specially exposed.

Who were the prosecutors? In Athens there existed a system of private prosecution. Anyone might come forward and bring a charge against anyone, as he may do here. There was, however, a deterrent to this course; the private prosecutor was liable, if he did not get a fifth of the votes, to pay a heavy fine²—quite as good a check upon ill-judged criminal

¹ Henry Bourgeois, *Le Tribunal des Héliastes et le Procès de Socrate* (Nîmes, 1891), p. 8.

² 1,000 drachmæ, or about £40. See Demosthenes *contra Timocratem*, p. 702.

proceedings as the possibility of bringing an action for malicious prosecution against, it may be, a pauper, a bankrupt, or a man of straw. Usually there was more than one prosecutor, or there might be an assistant prosecutor.¹ Perhaps this was to prevent collusion, to ensure a fair trial, or to give added weight to the proceedings. Perhaps it was a reminiscence of the procedure of the legislative assembly, which that of the Courts resembled. In this instance the prosecutors were three: Meletus, Anytus, Lycon. The case no doubt began with a sworn information before the Archon Basileus, who had jurisdiction over cases of this sort; of its exact nature in this particular instance we know nothing. But if the ordinary course was pursued there was a preliminary inquiry (*ἀνάκρισις*), at which sworn statements in writing were made, documents, and all the exhibits, as we should say, put in a metal or earthen jar and sealed, to be produced in Court. Next came the indictment (*γραφή*), or document corresponding thereto. It was as follows: "Meletus, the son of Meletus the Pithian, deposed on oath the following information: Socrates does evil. He does not believe in the gods whom the city believes in, but introduces other new deities. He corrupts the youth. Punishment—death." I am not forgetting that there is some uncertainty as to whether this was indictment or the sworn complaint before the Archon.²

Now, to an English lawyer—I might say to every modern lawyer—the brevity and vagueness of the charge seem incomprehensible. According to English Criminal Law it would have been bad from its want of particularity as to time, place, nature of offence and circumstances. Any properly drawn indictment would specify them. In a Scotch indictment in the old form, the minor proposition of the syllogism would have described these particulars; so too, the

¹ Meier und Schömann, *Der attische Process*, p. 708.

² *Ibid.*, p. 608.

modern form under the Act of 1887. The French *acte d'accusation* would have been a veritable biography of the accused. The German *Anklageschrift* would have precisely defined the charges to be met. Good enough for a motion in a popular assembly, the indictment of Socrates must seem to any lawyer inconsistent with the essentials of a fair trial in a Court of Justice.

At the actual trial the course of procedure was this : first, the prosecutors spoke ; in this case, all three, each probably taking a different line. Then came the witnesses. Who they were and what precisely they said is unknown. We may conjecture what was the line of attack of the prosecution ; it is probably to be inferred from the reply, assuming that Plato's *Apology* records accurately the real speech of the accused. I need scarcely remind you of the character of the defence. It is manly and uncompromising. I cannot say that it seems to be all strictly relevant to the charge ; a judge of our Courts would probably in his summing-up have pointed out that the defendant was labouring points not before the jury or open for their consideration. Socrates seeks first to remove the weight of prejudice against him, the attacks of his old enemies, going back to the time of *The Clouds*. He examines the origin of this prejudice. He finds it in this :

" I go about the world obedient to the god, and search and make inquiry into the wisdom of anyone, whether citizen or stranger, who appears to be wise ; and if he is not wise, then in vindication of the oracle I show him that he is not wise ; and my occupation quite absorbs me, and I have no time to give either to any public matter of interest or to any concern of my own, but I am in utter poverty by reason of my devotion to the god." ¹

Dealing with the charge brought against him by his accusers in Court, Socrates presses Meletus by

¹ *Apology*, p. 23, Jowett's translation (3rd ed.).

searching cross-examination, until he gets from him the answer that he thinks that Socrates did not believe in any gods, and proceeds to entangle him in a dilemma. Then, in solemn strain, rising above the incident of the hour, and indifferent to his own personal fate, he speaks as judge rather than as accused. He will not buy safety by silence, or by forsaking his divine mission.

"If you say to me, 'Socrates, this time we will not mind Anytus, and you shall be let off, but upon one condition, that you are not to inquire and speculate in this way any more, and that if you are caught doing so again, you shall die';—if this was the condition on which you let me go, I should reply: 'Men of Athens, I honour and love you; but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy.'"¹

". . . I am a sort of gadfly, given to the state by God; and the state is a great and noble steed who is tardy in his motions owing to his very size, and requires to be stirred into life. I am that gadfly, which God has attached to the state."²

He had often refrained from action in obedience to a divine sign.

"I have had it from my childhood; it is a kind of voice which, when it speaks, always turns me back from whatever I am going to do and never urges me to act."³

He will make no entreaty for mercy to his judges, who do not sit to make presents of justice but to judge. Finally, and as to the chief charge against him, his answer is:

"I do believe in the gods, as no one of my accusers believes in them; and to you and to God I commit my cause to be decided as is best for me and for you."⁴

¹ *Apology*, p. 29, Jowett's translation (3rd ed.).

² *Ibid.*, pp. 30–31.

³ *Ibid.*, p. 31.

⁴ *Ibid.*, p. 35.

Such is the substance of the speech for the defence in the *Apology*.

Is that which Plato puts into his mouth a fairly accurate report of what was actually said? Upon that point—the subject of controversy for centuries—I should not of course venture to express an opinion, if scholars and historians were at one with regard to it. But they are still hopelessly divided, as they always have been. In that diversity of opinion I venture to express doubts whether we have the true speech. I conjecture that every lawyer, thinking of the tribunal to which it was addressed, the nature and circumstances of the charge, would say that it was too literary in form, too round and smooth, too devoid of the element of unexpected incidents which never fail to occur in an actual trial. Conceive what was the tribunal, what was the theme, and who was the accused. The tribunal a large crowd, not presided over by anyone with the powers of control of an English judge, with no doubt many bystanders and spectators; the question one of life and death of a well-known citizen; the theme one of supreme moment to every hearer. It is barely possible that a jury of over 500 persons should have kept silence all that day. “Do not interrupt me,” says the accused to his judges (cap. xviii). Were there interruptions, and, if so, what were they? With no judge to regulate effectively the proceedings, there must have been some of the interruptions and incidents which never fail to occur even in Courts where forms are rigidly observed, and can, if necessary, be enforced. Socrates must have known all, or almost all, the persons whom he was addressing. He could scarcely omit in answering some of the charges, especially as to the corrupting of youth, to speak straight and directly to certain of his hearers.

There are discrepancies between Plato's and Xenophon's accounts. The witnesses, who, in all probability, were called, though the speech is obscure as to

this, are entirely ignored,¹ and we hear nothing of a witness whom the defendant promises to call. I cannot but suspect that the speech, together with the whole proceedings, was much less statuesque than the *Apology* represents it. Plato's version of it is great literature, none greater; supreme in its solemnity, dignity, and restrained pathos, in its simplicity and eloquence. It lacks only the element of reality. It is anything but the unstudied improvisation which it professes to be. It is not a speech to get a verdict.²

We know the result. In a Court of 501, 281 voted against the accused. It was a narrow majority; a change of 31 votes would have meant acquittal.

Next came the question of punishment, which it was the business of the prosecutors (as in some modern systems of criminal procedure) to propose. We may assume that one or more of the accusers spoke, as they were entitled, in support of the punishment of death. Of this, also, there is no record. Then came Socrates' reply (*ἀντιμῆσις*), in which, as of right, he proposed a counter penalty. It was uncompromising, ironical, and arrogant. If he gets his deserts, he will be maintained henceforth as a benefactor at the public expense. He will not be silent; he will continue his work, whatever be the result; the greatest good of man is daily to converse about virtue and all that concerning which he was in the habit of examining himself and others; "the life that is not examined is not life at all." Apparently to meet the wishes of his friends, he suggests a fine of 30 minæ. This line of defence was disastrous; it not merely braved the judges, but put them in a difficulty, because by Athenian practice, if not law,

¹ Pohlmann, *Sokratische Studien, Sitzungsberichte der Kaiserliche Akademie der Wissenschaften zu Munchen*, 1906, p. 88.

² [Did Socrates wish to get a verdict? John Burnet, *Plato's Euthyphro, Apology of Socrates and Crito*, Clarendon Press, 1924, pp. 64-5.]

the Court must select between the punishment proposed by the prosecution and by the defendant. According to Diogenes Laertius, it turned eighty of the judges against him.¹ In the *Apology* are recorded Socrates' last words to the Court. Again he speaks as judge of his judges, but addressing to them no reproaches and resigned to his fate. His divine monitor has convinced him that what has happened must be a good,

"and those of us who think that death is an evil are in error. For the customary sign would surely have opposed me had I been going to evil and not to good."²

He is hardly angry with his accusers or those who condemned him. His only request is that they will punish his sons if they care for riches more than for virtue, or reproach them if they think they are something which they are not.

"And if you do this, both I and my sons will have received justice at your hands. The hour of departure has arrived, and we go our ways—I to die, and you to live. Which is better God only knows."³

Thus ended the trial. Socrates was taken to prison, where he remained free to see and converse with his friends, as told in the *Phædo*. He is pressed by them to make his escape, and strong reasons, not wholly personal, are urged for this. But he will not yield or take a course which would be doing all he can to destroy the State. To depart without its consent would be doing wrong.

"Neither may anyone yield or retreat or leave his rank, but whether in battle or in a Court of law, or in any other place, he must do what his City and his

¹ Riddell, *Apology of Plato*, Introduction, p. xi.

² *Apology*, p. 40.

³ *Ibid.*, p. 42.

Country order him; or he must change their view of what is just." ¹

And so on the thirtieth day he drank the hemlock. "Such was the end, Echecrates, of our friend; concerning whom I may truly say, that of all the men of his time whom I have known, he was the wisest and justest and best." ²

I come to the questions which twenty centuries have reiterated and which are still fresh. Was it a fair trial? Was Socrates guilty? Was the defence a long sophism? Did he corrupt the youth? Was the result a judicial error or a judicial murder? I do not believe that to these questions there ever will be one answer. There will always be those who prize order and the interests of the community above all else; who make the safety of the State the supreme law; and they will answer as did Hegel, as many others have done since: "It was a good deed, a necessary deed; Socrates must die that the people might live and be strong." That was the opinion of the majority of his fellow-citizens; and there is no reason to believe that they repented, at all events until long afterwards. What they did was done in a time of uncertainty and with fears prevalent such as those which sent, more than 2,000 years later, Condorcet and Bailly and Lavoisier to the guillotine; and which made a Birmingham mob burn Dr. Priestley's house amid shouts of "No philosophers! Church and State!" In the unstable circumstances of the Athenian State, with no outlet for popular passions except the ecclesia and the dikastery, there was some excuse for it. He was a menace to the old order; he struck at its very base. Any shock to the foundation of the State was immediately felt. It travelled unhindered from the base to the summit of the edifice. There were no intermediate elements to

¹ *Crito*, p. 51, Jowett's translation.

² *Phædo*, p. 118.

deaden the blow. "The interests of the State lacked the protection afforded by the hereditary transmission of the supreme magistracy, by an organized military power and a system of public departments."¹ If the motives of the prosecution were largely political, set on foot by "a man of strong political convictions,"² so also was the line of defence addressed to his countrymen by one who was, Mr. Riddell says, "totally out of harmony with their political optimism."³ If the prosecution and condemnation of Socrates were acts of State, they were at least done decently and in order, and with no desire to stifle the voice of the victim, and there are none of the circumstances of brutality which I shall often have to note in medieval and modern trials. That is one view of the trial still often expressed. But there will always be others who, prizing individual freedom and the inner life above all things, thinking much of the invisible and imponderable things about us, will regard the result as a crime, the victim as the first and greatest martyr for true freedom and true progress. In the presence of these antinomies among the irreconcilable things of life, the mere lawyer cannot give much assistance. But he will try to put himself in the position of the judges, and seek to understand the law which they administered; he will apply to their conduct the tests, not of our time, but of their own. And he will also put to himself the question: would the results have differed if Socrates had been tried elsewhere and at some other time? It will appear, I think, when I come to treat of subsequent trials, that he might have fared no better, perhaps worse. Brought before an ecclesiastical Court, as were Bruno and Campanella, he would have been tortured; he would have been subjected to repeated examinations and long confine-

¹ Gomperz, *Greek Thinkers* (translated by G. G. Berry), ii. 113.

² Riddell, p. xxviii.

³ *Ibid.*, p. xxx.

ment intended to break him down in body; his prosecutors laying hold of his belief in a demonic voice, he would have been charged with sorcery or magic; he would have been cut off from his disciples and delivered over, shattered and crushed in body, to the civil power to be burned. Had he been tried in this country at any time before the middle of last century, would his treatment have been much better? In Tudor or Stuart reigns he would have been charged for high treason or blasphemy or misdemeanour of some kind, browbeaten by the law officers prosecuting, scolded by the presiding judge as a pestilent nuisance in the State, and his last words before a cruel death might have been cut short or drowned in the roll of drums beneath the scaffold. Let us picture him coming before an English or a Scotch judge at the end of the eighteenth or the beginning of the nineteenth century—before an Ellenborough who tried Hone or a Braxfield who tried Muir and Margarot; he would have been belaboured with pompous platitudes or subjected to coarse ribaldry, and his conviction would have been certain. An Austrian writer in 1855 says that if he had been in Vienna or Berlin or Munich, and had been constantly assailing the incompetency of rulers and the faults of the existing dynasties:

“it would not have been after ten years, but in the first year of his teaching that he would have been put, *extra statum nocendi*; and even if he had not been condemned to death, he would have been imprisoned for life.”¹

If we could conceive the great searcher of truth in the world to-day his fate would be different. He would be the terror of the ordinary party politician, of unscientific lawyers and writers subsisting by the facile handling of undefined concepts. They would hate and dread his “heckling” and the consequent

¹ Köchly, i. 358 n.

depreciation of their verbal stock-in-trade. But he would not drink hemlock. He would be explained—explained by those who did not understand him—as impracticable and as an obstruction. He would not be persecuted; he might be belittled. He would not be silenced by the State. But in a world noisy with many voices over little things he might not be heard. It is not certain that many to-day would understand, as his hostile judges understood, that a great disruptive force had come into the world. Of course he would not have perished by process of law. But his teaching would not have had the seal of martyrdom, his example not the ever-memorable effect given to it by the crowning act. It is, as Harnack says, the dying Socrates, not the living teacher, the unwearied searcher after truth, the supreme dialectician, the master of the inductive method in its full range—that speaks to posterity.¹

Harnack, *Sokrates und die alte Kirche* (Giessen, 1901).

II. THE KNIGHTS TEMPLARS

I COME next to a trial which forms one of the enigmas of history; a trial, or, to be more accurate, a series of trials, as to which there is no agreement; as to which opinion has fluctuated much; as to which scholars of eminence still differ profoundly; as to which materials of value are being from time to time discovered: I mean the trial of the Templars and their order. Only lately one document of great value has been found by Schottmuller, and at any time there may come to light fresh evidence which may affect the verdict upon the questions at issue. To refer to only a few of those who have studied the subject, I may mention that Michelet, in his *History of France*, was on the whole clear as to the innocence of the order; his view was that a great crime had been committed, and he gave his reasons for that opinion. It fell to him subsequently to edit the records of the French trials preserved in the National Library at Paris, and, in the preface to the second volume, he announced that he had modified his earlier opinion. Raynouard, one of the first of modern scholars to look clearly into the subject, was emphatic in his verdict of acquittal. So was M. Lavocat in *Les Procès des Frères et de l'Ordre du Temple* (1888). So too was Döllinger, who in his last lecture pronounced in favour of their innocence.¹ On the other hand, it must be owned that Ranke took, on the whole, a contrary view. Unfavourable, too, though on peculiar grounds, is the conclusion of Prutz, who has in several books minutely examined the subject; while not

¹ J. J. I. von Döllinger, *Akademische Vorträge*, iii. 245.

thinking that all the charges are proved, he is of opinion that they were substantially well founded. Of the very latest authors who have studied the subject (Dr. Lea, Dr. Finke, and Dr. Gmelin), I may say that all of them are in the main convinced of the innocence of the order as an order, whatever may have been the failings of individuals. In face of this variety of opinion I need scarcely say that I shall state my conclusions with great diffidence. But I have examined the original documents; I have come to their perusal with no preconceived opinion; and I have tried to look at the long-standing controversy chiefly from the point of view of a lawyer, applying the ordinary canons of evidence.

I have spoken of the trial of the Templars. In strictness it was not a trial. Rather it was a series of trials, the defendants to be counted by the hundreds, the venues not in one country but extending over the greater part of Europe—France, Brabant, Provence, several parts of Italy, England, Ireland, Scotland, Germany, Spain, Majorca, Portugal. Another peculiarity: it was not only the trial of so many individuals for crimes which it was alleged they had committed, but of a great religious international order; a trial therefore, so far as I know, absolutely unique.

It was an attack under the guise of law upon an international and privileged order; and, so far, a measure somewhat similar to the destruction of the monasteries, the overthrow of the Jesuits, or the abolition of the religious orders in our days in France. But it had special and indeed unique features. There were international trials; there was the spectacle never before or since witnessed of trials going on simultaneously in several countries; the same defendants, much the same prosecutors, the same evidence, the same charges preferred, and, with exceptions to be stated, the same results. Whatever be thought of the result, it was no doubt a great

turning-point in history. Döllinger states this impressively: "If I were to name one day in the whole extent of world-history which appears to me to be in very truth *dies nefastus*, I would name no other than the 13th October 1307."¹ A strong statement, but one for the truth of which much may be urged.

Let us recall certain material facts and illuminating dates.² The order had small beginnings. After the capture of Jerusalem by the Crusaders in 1099, the pilgrims who flocked to Palestine suffered much at the hands of the Bedouins and robbers who infested the roads. To put an end to all this crime, pious knights formed a brotherhood for the protection of the highways.

"Certain knights, however, beloved of God, devout and fervent in charity, renouncing the world and giving themselves up to the service of Christ, bound themselves by profession at the hands of the Patriarch of Jerusalem and by a solemn vow that they would defend pilgrims from the aforesaid robbers and men of blood, and guard the public ways, ready to serve the King of kings after the manner of canons regular in obedience and chastity and without personal property."³

Two knights were sent to St. Bernard, abbot of Clairvaux, to ask him to use his good offices with the Pope to obtain approbation of their order, and to arrange for statutes or rules reconcilable with the tumult of the camp and the profession of arms. St. Bernard used his influence with the Pope; a council was assembled at Troyes in 1128; approval was given; and to him was left the framing of rules. The rule of the order was austere and harsh. The

¹ J. J. I. von Döllinger, *Akademische Vorträge*, iii. 263.

² See G. Schnürer, *Die ursprüngliche Templerregel*.

³ Jac. de Vitruvius, *Hist. Hierosol.* apud *Gesta Dei per Francos*, c. lxxv, p. 1083, quoted by W. G. Addison, *History of the Knights Templars* (1842), 5 n.

knights were to have no possessions of their own except their arms and their habits. They were to wear white cloaks, but with no ornaments; their squires were to wear black garments; their food was to be simple, their demeanour sober; they were to talk little; they were to eschew hawking and even hunting. In a treatise or exhortation, which St. Bernard wrote at the request of the Grand Master Hugh de Payens, he described the perfect Christian warriors. They are to wage the war of Christ their master without fearing that they sin in killing their enemies, or of being lost if they are themselves killed, since when they give or receive the death-blow, they are guilty of no crime, but all is to their glory. If they kill, it is to the profit of Christ; if they die, it is to their own. The Christian is glorified by a pagan's death, because Christ is thereby glorified. Pagans are not indeed to be killed unnecessarily; but in the present circumstances it is more expedient to put them to death, in order that the rod of the sinner should not smite the just. St. Bernard becomes ecstatic in his exhortations to the soldiers of the Cross: "Go forth, tranquil and content, repel with victory the enemies of the Cross of Christ, assured that neither life nor death can separate you from the love of God; happy and glorious those who return victorious, happier still those who die in battle."¹

Never was the slaughter of the heathen extolled in more lyrical, exultant terms.

I fear that if ever this lofty ideal was realized by many of the Templars, a great change had taken place by the end of the thirteenth century in their condition and their habits. In truth their original vocation was gone. From 1095 to 1291, a period of nearly two centuries, followed various Crusades. In 1291 they came to an end. The Crusaders had lamentably failed; the Crescent had triumphed over the Cross;

¹ St. Bernard, *De laude novae militiae ad milites templi*, in Migne, P. L., clxxxii. 921.

by the capture of Acre in that year the last foothold of the Western nations was lost, and the Knights Templars' occupation was at an end. Meantime they who were, according to the rule of their order, to live in poverty, with no possessions except their arms and horses, had grown enormously rich. They had fiefs and manors scattered all over Europe. They were too bankers and money-changers on a large scale.

The tendency has been to exaggerate their numbers; Dr. Gmelin,¹ quoting the few available figures, calculates that at no time were the Knights more than 2,000; the members of the order added to these would come in all to about 15,000.²

The annual income of the order in Europe has been roughly estimated at six millions sterling,³ which is probably a great exaggeration. Matthew Paris states that in Europe they possessed nine thousand manors besides large revenues proceeding from charitable bequests or donations.⁴ That they were proud and haughty, that they were often grasping, that they used to the full their opportunity as bankers of making money is clear. Scholars have collected popular expressions of those times as to their pride and luxury, e.g. "to drink like a Templar"; and we may refer to the speech of a Grand Master in which he bewails the declension of the order from its original simplicity, and predicts evil days in store for men who are false to St. Bernard's rules.

They had obtained from successive Popes important privileges, which they used to the full extent, and, as an international body, they had a policy of their own which they pursued without reference to the interests of their native lands. Their inclination would be to stand by the Papal power rather than the national

¹ J. Gmelin, *Schuld oder Unschuld des Templerordens*, pp. 231-2.

² *Ibid.*, p. 234.

³ Addison, p. 97.

⁴ Matthaei Paris, *Historia Maior*, etc. (1640), p. 615.

sovereignty,¹ It is plain that they were regarded in several quarters with jealousy.² But no one seems to have supposed that they were a real danger to the State, even in France, where they were most numerous; they were too scattered to admit of any decisive or continuous influence. The evidence of special or widespread hatred of the order before the fatal blow fell is slender. In 1304, Philip, who was in a few years to destroy them, had spoken of their works of piety and of pity. Probably they were not much better or worse than other men of their own rank and pursuits, men who had lived in camps and in many lands, who were subject practically to no law except that of their own order, who were accustomed to rule their dependents harshly and despotically. Suddenly, to the amazement of the men of the time, including those likely to be best informed, this powerful order, the child of St. Bernard, the favourite of the Church and of Princes and pious donors in all lands, was denounced as grossly heretical, its members guilty of systematic immorality on a scale of depravity unknown before, the order itself an unholy institution; its members were thrown into prison and tortured, many burnt at the stake, and for five or six years, almost in every land in Europe, they were the subject of fierce persecution.

To see how the prosecution came about, and ended in the destruction of the order, we must understand the political and financial situation and circumstances of the time; in particular the position of the Crown in France, the Papacy, the Clergy, the Templars, and, not least, the powers and functions of the Inquisition. In the first place the Crown was poor. It was put to

¹ Gmelin, p. 225; e.g. Bull *Omne datum optimum*, 1172—18 June, 1163—26 October, 1173, Rymer, i. 27.

² H. G. Prutz, *Zur Genesis der Templer-prozesses*, in *Sitzungsberichte der Kaiserliche Akademie der Wissenschaften zu Munchen* (1907), p. 5. At the Council of the Lateran (1179) they were admonished by reason of their abuse of the privileges which they had received from the Holy See.

desperate expedients to raise money; it had, for example, debased the coinage so often and to such an extent that Philip was popularly known as the counterfeiter (to Dante he is "il mal di Francia").¹ He was indebted to the order and had no means of repayment. In the next place there had been going on between the Crown and the Papacy a struggle in which the French Crown had signally triumphed. Pope Boniface VIII had been baffled and outwitted and humiliated and had died in misery; and after a short interval he was succeeded by Clement V, a man of no strong character, vacillating and irresolute, not the less the creature or puppet of Philip because from time to time he revolted against Philip's ascendancy. He might strive to free himself from the domination of the King; all to no purpose, he must always in the end succumb. He might more than once have averted the catastrophe; his weakness and irresolution precipitated it. What the King greatly desired were bold, clever, astute men about him who could carry through, excommunications notwithstanding. For there had arisen a school of statesmen and lawyers, who began to play a great part in political life and organization. I mean the legists or publicists who, bred upon Roman law, acquainted with the organization of the Roman Empire, and accustomed to look up to it as perfect, exalted the power of the sovereign, and were ready to put themselves in antagonism to the Church. They had no liking for an order which stood outside, so to speak, the feudal system, which recognized no master except God; they detested this aristocratic republic.² We shall find their creed later expressed more completely by men such as Bodin; but it is already formulated: "these knights of the law, these souls of lead and iron, these Plaisians, Nogarets, Marignys, proceed with grim

¹ *Purg.* vii. 109; cf. xx. 91.

² Lavocat, *Procès des frères et de l'Ordre du Temple*, p. 103.

coldness in their servile imitation of Roman Law and the imperial fisc."

Among these was a lawyer whose work and influence at this time have only recently been fully measured or appreciated. Pierre du Bois had one fixed idea, and that was to exalt the power of the Crown in France, a subject upon which he was a fanatic. He wrote copiously, and not a little with reference to the Templars. He was the author of the *requête censée* purporting to be addressed by the people to the King requesting Clement to suppress the order. He is believed also to have written a certain proposal to the Pope by the King upon the matter of the Templars; also a fuller *requête* of the people to the King praying for the abolition of the order. In this last tractate he argues that the King has jurisdiction over them. The Templars, being apostates rather than heretics, are to be regarded as homicides belonging to the King, an argument likely to satisfy those who were already fully convinced. A man of great ability and courage, Du Bois did much to make familiar the idea of abolition of the order and confiscation of its property. Then, too, the bishops and clergy had grievances against the order.

Let me add that it was a time of disillusionment and disappointment. The Crusaders had failed, signally failed, to the knowledge and amazement of everyone. That was not all. Men of the West had met men of the East; they had fought against each other; they had learned to respect each other; they could not return home with the prejudices unshaken with which they had set out. The Crusades had doubtless brought about a confusion of beliefs, a mood of lassitude, perplexity, and scepticism in many minds, the natural sequel to the enthusiasm out of which they arose. It had become evident that men might gain the Holy Land and lose or impair their faith. Thrown together with Saracens, living in the East as their home, the Crusaders no doubt caught something of the manners

of the East; they were rich and often idle; they had become acquainted with practices repugnant to Western people. It was, too, a time in which there was much talk of heresy and in some quarters a veritable rage for persecution. And what is also clear—what for the first time has been demonstrated by Dr. Lea—is the importance, as a factor in the case, of the Inquisition, which had become a compact and powerful organization. The prosecution which I am about to describe was its first great triumph, and without its aid the proceedings might have failed. The Inquisition lent its machinery and threw over the worst atrocities the veil of legality. It struck for the first time at the mightiest.

“The entire French kingdom was at that time a realm of the Inquisition. . . . Philip the Fair had in a way set himself up, like no other monarch before or since, not even Philip II of Spain, as the favourer and protector of the Inquisitors and the Dominican Order.”¹

As Dr. Finke says :

“Thus the Inquisition and the Monarchy appear bound together as at no other period of the Middle Age. We have indeed often to recognize a dependence of the temporal power on the Inquisition, but in France we find the converse relation, and with it what is in many ways a caricature of the working of the Inquisition. Unless we realize that the Inquisition is the basis of the Templars’ trials, we cannot understand the prosecution in its entirety.”²

I do not know whether it could be shown that the Inquisition had captured the Monarchy, or the Monarchy the Inquisition. In this alliance each found the other useful.

¹ Döllinger, iii. 252.

² H. Finke, *Papsttum und Untergang des Templerordens*, 1. 149.

And now a brief narrative of the course of events in the prosecution, which fall into two groups: proceedings against the individual members, proceedings against the order itself; proceedings intended to bring guilt home to individuals, proceedings intended to fasten upon the order itself the charge of heresy, which if proved entailed confiscation of its property. The Pope in 1306, shortly after his coronation, had invited the Grand Masters of the Temple and the Knights Hospitallers to come to France to consult about the means of recovering the Holy Land; whether this was a project of deception I do not know. The latter did not come. The Grand Master of the Templars, Jacques Du Molay, accepted the invitation and arrived in the beginning of 1307. There were some negotiations which came to nothing about a union of the two orders. He was received with honour as befitted his rank. There was nothing to excite his suspicion. The King struck suddenly and without warning; on the 14th September 1307 he sent to the baillis and sénéchaux of the provinces of France secret orders in which, enlarging upon the enormous wickednesses of the Templars, he directs them on the 13th of October next to surprise them, make them prisoners, and seize their property. Torture was to be used, if necessary, and a promise of pardon was to be given if they confessed the truth, "but if not, you are to acquaint them that they will be condemned to death."¹ Accordingly, on the night of the 13th October 1307, orders went out for the arrest and imprisonment of all Templars in France. The day before the Grand Master Du Molay had been invited to attend the funeral of the Princess Catharine. On the following day throughout France the Templars, with few exceptions, were made prisoners. The chief seat of the order in Paris, where was its treasure, was taken possession of by the King's Ministers. The masters

¹ Dupuy, *Histoire du Procès des Templiers*, ii. 309, quoted by Addison, p. 202.

of the University were invited by the King to express their opinion upon the matter. The populace was excited against the Templars by addresses delivered by Dominicans in the Royal Palace. Letters were sent by the King to the chief sovereigns of Europe telling them of the charges made against the Templars and urging them to take like measures. Wild stories were circulated about the Templars worshipping an idol in which "were two carbuncles for eyes, bright as the brightness of heaven, and it is certain that all the hope of the Templars was placed in it; it was their sovereign god, and they trusted in it with all their heart."¹ There were stories, too, of their burning the dead bodies of their members and making the ashes into a powder to be administered to the young members; stories, too, of all sorts of abominations perpetrated by them. In Paris and in many other parts of France the members of the order, including the *servientes*, were seized and subjected to torture in order to obtain confessions. All this was legal; proceedings were taken at the instance and under the direction of Guillaume de Paris, the Chief Inquisitor; it was part of the practice of the Inquisition, once suspicion of heresy was raised, to inflict torture in order to obtain further proof. The torture was frightful; many died under it. Of course, many confessed to every crime imputed to them; they even adhered to their confession; they knew that if they retracted or qualified their confessions they would be tortured again or burnt at the stake as apostates. Unfortunately for the order, Du Molay, the Master, also made a confession and signed it, one which he subsequently withdrew, but of which the King and Pope made the most.

I despair of giving a complete account of the complicated proceedings; even those who have written volumes on the subject have failed to make their

¹ Addison, p. 203, quoting Dupuy, p. 24, ed. 1713.

narrative clear. I can mention only episodes in proceedings which lasted some six years.

I return to what was being done by the prime movers, Philip and Clement. The latter is for a time indignant that the King is taking action in a matter which belongs to him; the Templars are under papal jurisdiction. But again, he is irresolute; he takes no consistent course. On the 22nd November 1307, by a Bull (*Pastoralis præeminentiæ*) he is stating to the sovereigns of Europe that he is convinced of the truth of the charges; that they must hold their prisoners and property subject to his orders.

In October of 1307 the Pope gives orders to the Inquisitioners to stop proceedings. But Philip's astute advisers were equal to the occasion and foiled him. The King summoned, 15th April 1308, at Tours, a sort of national assembly before which he laid the various charges, and on the strength of the evidence obtained by torture procured a resolution that the Templars should be put to death.

Pressure was brought to bear upon the vacillating Pope to proceed; he consented to appoint five cardinals to examine the charges. It was a packed commission,¹ and no doubt, too, the witnesses brought before them were picked.

"A portion of them were spontaneous witnesses who had left, or had tried to leave, the Order. The rest, with the terrible penalty for retraction impending over them, confirmed the confessions made before the Inquisition, which in many cases had been extracted by torture."²

The Pope and King being at last substantially at one, everything marched quickly to the end which the latter had in view. The Pope, by the Bull *Facimus misericordiam*, enjoined the bishops through-

¹ Gmelin, p. 388.

² H. W. Lea, *History of the Inquisition in the Middle Ages*, iii. 281.

out Europe to summon the Templars in their dioceses before them and, along with the commissioners appointed by the Pope, to conduct an inquiry into their guilt; provincial councils were to be summoned afterwards to give their decision. By a Bull (*Regnans in cælis*) addressed to all princes and prelates, a general council was summoned at Vienne for the 1st October 1310, to decide the fate of the order, a council which for one reason or another was postponed and which did not actually meet until the 16th October 1311.

By this Bull, August 1308, Pope Clement V sent to the various sovereigns of Europe a series of articles or heads of accusations, upon which the Templars were, he suggested, to be interrogated. Those forwarded to England were 87 in number; those used elsewhere were somewhat more numerous.¹ Of some of the charges against the order I can only say that they were charges of systematic immorality, too foul to be mentioned. The opening charge was contained in Article No. 1 :

“That each one at his admission, and as often afterwards as he receiving him could have opportunity for it, denied Christ, sometimes as the Crucified, at others Jesus, at others God, and sometimes the Blessed Virgin, sometimes all the saints of God, being persuaded and admonished thereto by those who admitted him. Item, [that] the brethren did this generally. Item, that the greater part [did it].”

Other articles related to the denial of the Christian faith :

“Item, that those who admit said and taught to those whom they admitted that Christ is not true God, or sometimes Jesus, or sometimes the Crucified.

“Item, that the same said to those whom they admitted that He was a false prophet.

¹ H. W. Lea, *History of the Inquisition in the Middle Ages*, iii. 263.

“ Item, that He did not suffer nor was crucified for the redemption of mankind, but for His own sins.”

Then came the charge most insisted upon :

“ Item, that they made those whom they admitted spit upon the cross, or upon the sign or carving of the cross, or the figure of Christ, though sometimes those who were admitted spat beside it. Item, that sometimes they ordered the same cross to be trodden underfoot.”¹

Another head of charge was the worship of a certain cat :

“ Item, that they worshipped a certain cat which appeared sometimes at their meetings.”²

They had, too, special idols :

“ Item, that they had in every province idols—that is to say, heads, whereof some had three faces, some one, and some a human skull.

“ Item, that they worshipped these idols or this idol, and especially in their great chapters and meetings.”

Articles 48 to 57 were :

“ That they worshipped it (this idol) as their God; that some of them did so; that great part did; that they said this head could save them; that it could produce riches; that it had given to the order all its riches; that it caused the earth to bring forth seed; that it made the trees to flourish.”³

It would take several lectures to narrate, even in outline, the course of events in other countries; the subject is interesting, partly because, for the first time during the last few years, the materials have become

¹ J. Michelet, *Procès des Templiers*, i. 90.

² *Ibid.*, i. 91.

³ *Ibid.*, i. 92.

accessible; but it would necessitate a separate treatment. I will refer, and that briefly only, to what took place in England. At first Edward II refused to act upon the intimation given by Philip on the 16th October 1307; the charges against men held in high honour seemed incredible. But upon receiving the Pope's Bull of the 22nd November 1307 he issued orders for the arrest of the Templars and the sequestration of their property.¹

In London the inquiry began on the 20th October 1309 before the Bishop of London and the Papal inquisitors. The Templars asserted their innocence; the witnesses against them were weak and vague. The accusers could make no headway, and for one reason they could not employ torture; the law or custom of the country was against it. The Pope, indignant at this obstacle placed in the way of the inquiry, urged the King to apply torture, law or custom notwithstanding.

"Thou hast forbidden proceedings to be taken by torture against these persons and their order for the purpose of inquiring as to these charges, although these same Templars are said to deny the truth on these points. . . . Give heed, we beseech, dearly beloved son, and weigh with wise consideration whether this is consistent with thine honour and safety and befits the state of thy realm." ²

The King eventually yielded; it was ordered that, if the prisoner would confess nothing, torture was to be applied:

". . . and if through imprisonments and deprivations of this kind they will confess nothing else than formerly, that then they should be tortured; but so that those tortures should be without mutilation or

¹ Rymer's *Fœdera*, iii. 18; Lea, iii. 288.

² Quoted by Addison, p. 243.

permanent weakening of any limb, and without violent shedding of blood.”¹

This is the first and probably the only formal recognition of torture in England. But all to no purpose; the Templars were tortured and imprisoned for more than three years; certain hearsay statements absolutely worthless were collected; an excuse was given to the Crown to seize and distribute their property. But of evidence of the truth of the charges there was absolutely none. I quote from Mr. Addison's volume the result of inquiries conducted elsewhere :

“ Similar measures had, in the meantime, been prosecuted against the Templars in all parts of Christendom, but no better evidence of their guilt than that above mentioned was ever discovered. The Councils of Tarragona and Aragon, after applying the torture, pronounced the Order free from heresy. In Portugal and in Germany the Templars were declared innocent, and in no place situate beyond the sphere of the influence of the King of France and his creature the Pope was a single Templar condemned to death.”²

But in France more drastic measures were used. There what may be called the trial of the order began in April 1310, and that the trial should be unexceptionable and therefore conclusive, citations were served on the Templars to defend the order of which they were members. Under the influence of promises of safety some fifty-four came forward and intimated their intention of defending the order. They had reckoned without their lord. Their offer involved a retractation of all they had confessed, and on the plea that they were relapsed heretics they were, on the 12th May 1310, burnt by order of Philippe de Marigny, Archbishop of Sens, and brother of that Enguerrand

¹ Wilkins, *Concilia*, ii. 314, quoted by Addison, p. 244.

² Addison, p. 274.

de Marigny who was one of the ablest and most sinister of Philip's creatures. If any proof were needed of the utter hypocrisy of the entire proceedings, surely here is evidence enough and to spare.

Council after council in France condemned the order, and the time was now ripe for Papal action. Even so, the Council of Vienne was managed with difficulty. After constant and heavy pressure on the Council from King and Pope, it was resolved to proceed by Papal action alone, and in the result, by the Bull *Vox in excelso*, the order was abolished and its property confiscated; and Philip, having got the material benefits of the prosecution, was content that the motive should appear as policy rather than punishment. And so the order was never condemned, after all.

What was to be done with the knights themselves? That was left to the determination of the tribunals which had tried them. In the end the majority of them, at any rate in France, rotted in dungeons, but for the head of the order a harsher fate was in store.

The Grand Master, who had been in prison for over five years, was brought before the Commission at Paris. He strenuously denied the truth of his confession :

" By making the sign of the cross twice before his face, and by other means, he appeared to pretend himself much astounded at the things which were contained in his aforesaid confession and others in the letters apostolic above mentioned, saying among other things that if the said lords commissioners had been others who were allowed to hear it he would speak otherwise." ¹

But all in vain. He was hurried to execution. On the scaffold he said :

" I do confess my guilt, which consists in having, to my shame and dishonour, suffered myself, through

¹ J. Michelet, *Procès des Templiers*, i. 34.

the pain of torture and the fear of death, to give utterance to falsehoods, imputing scandalous sins and iniquities to an illustrious order, which hath nobly served the cause of Christianity. I disdain to seek a wretched and disgraceful existence by engrafting another lie upon the original falsehood.”¹

A few words as to the general effect of the evidence and the nature of the proceedings.

First as to the Courts which conducted these numerous inquiries and condemned so many men of different nationalities to torture and death. All is strange at first sight. Feudalism was in full force. Each lord had his own Courts. The King, too, had his—that was a characteristic of feudalism. Yet in various countries the Pope set on foot inquiries to be conducted by bishops or their officers, or by the Inquisition, and nowhere (a few cases excepted) was his jurisdiction questioned. The areas of the jurisdiction of the secular Courts were local. They could deal only with offences committed within their territory or, in virtue of the tie of allegiance, by subjects elsewhere. They could not do more; their jurisdiction was territorial; that also was a characteristic of feudalism. The bishops, as ecclesiastical judges in ecclesiastical matters, were similarly restricted to crimes committed within their dioceses. The Inquisition, on the other hand, was virtually without any such limitations; when set up anywhere, it could deal with offences committed anywhere; it could try anyone for offences in any country. Usually, too, there were exemptions in virtue of rank or upon other grounds from the jurisdiction of secular courts; but no such limitations operated as to the Inquisition; high and low, prince and peasant, clergy and laymen, were subject to it. Originally all questions as to heresy belonged to the ecclesiastical courts; the secular courts had no concern with them except, when

¹ Addison, p. 279.

the accused were condemned, to burn or otherwise punish them. But long before the time with which we are now concerned heresy had become a secular offence; consequently the lay courts claimed, emphatically claimed, concurrent jurisdiction; if the ecclesiastical authorities did not do their duty, it behoved the secular judges to intervene, and, in virtue of this doctrine, the legal advisers of the French king could force them to take action.

For a time the Pope objected to this threat to his jurisdiction in regard to the order and its members. The answer to this was: "you charge them with offences cognizable independently of ecclesiastical law." The Templars who tried to defend themselves by legal means were in a dilemma. They wanted to appeal to the Pope, and in law they had such a right. But he had handed the matter over to certain cardinals, in particular the Cardinal Bishop of Palestrina, who was Philip's creature.

I have already stated the charges. But I ought to add that at first they were vague and indefinite: charges of heresy, immorality, and blasphemy. Only gradually and slowly did they take fixed shape, and in the end some of them were put in clever alternative forms, a device familiar to lawyers anxious to get conviction by hook or by crook.

I cannot help quoting the words of Renan with respect to the growth of the charges, the gradual building up of a case against the accused.

"It became apparent that, as fast as the ecclesiastical authorities raised an exception in order to save these unhappy people, relentless enemies imputed to them fresh crimes in order to secure their condemnation. Calumnious machinations which produced such frightful suffering are here to be seen in all their horror. In the very first pamphlets of Du Bois, about 1300, the plan of destroying the order of the Temple is to be perceived. But at that moment there

was no question of imputing heresies to the whole order. These heresies were invented only when it was seen that the sole means of confiscating the wealth of the order was to accuse it of crimes against the faith. It was by invoking ecclesiastical grievances that Philippe plundered the Italian merchants in 1291 and the Jews in 1306. Similar charges were brought against Boniface VIII; the indictment of the Templars was shaped in the same mould as that of Boniface. When the story of the destruction of the order of the Temple is studied critically, search will have to be made in the works of Pierre Du Bois for an explanation of this mysterious affair. Proof will be found there that the suppression of the order was a plan concerted not later than 1300, and was not the result of pretended heresies which were not alleged till 1307." ¹

There is great force in M. Renan's observations.

I come to another question: Were the Templars guilty of all or any of those charges? I mean the order as distinct from individual members. What I may call the old view, that is, the view common until certain investigations in the last century, was altogether in favour of their innocence. For a time, I admit, there was much vacillation of opinion among scholars. But I think I am justified in saying that the best opinion to-day is emphatically in favour of their acquittal. In the main the answer to this question depends upon the value of evidence obtained by torture or the threat of it. Now at this time there was a widespread, almost insane, belief in its efficacy as an instrument for eliciting truth. Recognized at first with reluctance by the ecclesiastical court, and subject to certain restrictions, it had become a regular and important means of extracting evidence. The Roman criminal law, to its dishonour, had admitted it in the case of slaves and in certain rare cases of freemen. But the Church virtually cast aside these

¹ J. E. Renan, *Études sur la politique religieuse du règne de Philippe le Bel*, p. 363.

restrictions; a horrible science upon the subject grew up, we read of machines brought over from the Continent to inflict torture upon the English Templars. Probably these trials exhibited the employment of torture on the largest scale ever known. If one distrusts—as, for my part, I profoundly do—all such evidence, the main case against the Templars goes entirely; it was built almost solely upon such evidence. As Dr. Döllinger says: “Never and nowhere in the whole of Christendom did a Templar make a confession unless constrained thereto by torture or the fear of it.”¹

Even when there was not what might be called torture in the Inquisitioner’s jargon, devices were habitually employed which made a fair trial impossible, and enabled the Court to extract a series of contradictory answers which the notary taking down the examination might present as something like a confession.

A brief reflection to be made upon the facts of the case is this. There was a series of rules of procedure, skilfully calculated to ensure convictions and to defeat all attempts to set up a defence with success. To name one or two—when the accused denied guilt, torture was applied, and, if he persisted in his denial, with increasing severity wholly at the discretion of the Inquisitor. Another practice fatal to many accused was this. They were not told the names of the witnesses against them; it was probably craftily insinuated that this or that person undisclosed would give evidence against them.

As witnesses against an accused all criminals were competent, while on the other hand they were incompetent as witnesses for him. Further, anyone giving legal assistance or counselling him in his defence incurred a grave risk; he was himself liable to be proceeded against as a *fautor* or promoter of heresy. Again, anyone retracting or modifying his confession obtained by torture, when the pressure or terror was

¹ Döllinger, iii. 257; Lea, iii. 260.

withdrawn, might be treated as an apostate and as such might be sent to the stake.

Nay, so much was the procedure in favour of the accuser that it was permissible in matters of heresy for the Court to proceed summarily, to disregard all legal forms, to exclude advocates, to dispense with formal judgment.¹

I have not the time to tell in detail how the will of the unfortunate accused was broken, his mind harassed, his body enfeebled; how he was entangled in contradictions; how deceit was practised upon him by inquisitors, working in secret. But I have said enough to justify me in asserting that in any modern courts of law the admissions extorted by such means and such a system would go for nothing. I think, too, I have said enough to show that the court which condemned the Templars was a magnificent machine, unsurpassed in its power of transforming innocence into guilt; and its greatest achievement was the trial of the Templars.

I say nothing of the gross improbabilities of most of the charges; the improbability, for example, of the practices not being long before disclosed and proclaimed to the world by the many powerful enemies of the order; the contrast between their public conduct and their alleged secret conduct, "the heroic devotion for the most part to the causes which they were alleged to despise."

It is rare that we get a piece of genuine independent evidence, but when we find it, that evidence is favourable to the accused. For example, Brother Petrus de Palude Lugdunensis ² says:

"That he had been present at the examinations of many Templars, some of whom confessed many of the misdeeds contained in the said articles [of indictment], and some others denied them altogether, and for many

¹ F. J. M. Raynouard, *Monuments historiques relatifs à la condamnation des Chevaliers du Temple*, p. 60.

² Michelet, ii. 195-6.

reasons it seemed to him that greater reliance should be placed on those who denied than on those who confessed."

And then he proceeds to tell a story of two Templars riding on one horse in a battle, one recommending himself to Christ, and the other to the devil.

One or two writers, Prutz in particular, have tried to prove that there was a secret doctrine of the order known only to the initiated; that this doctrine was acquired in the East; and that it substantially agreed with the allegations in the charges. It is an hypothesis industriously supported by Prutz, but devoid of real foundation.

There may occasionally have entered into some of the initiatory ceremonials an element of farce and even horse-play. There may too have been rough and coarse expedients employed to test the unconditional obedience of the novice. The knights were soldiers accustomed to the ways of camps; their *servientes* might be men of low birth and of worthless character. In the Middle Ages the grave and the grotesque, things most sacred and those most alien thereto, are rarely far apart; the gargoyles on the cathedrals, figures often vile or comical, are near those of saints and martyrs; and it may be that some of those who on the whole fairly well observed the rule of St. Bernard indulged in unrefined merriment and profane speech. Magnified and distorted, in these incongruities and misplaced mirth was found what in the technical language was called a *vehemens suspicio*; torture did the rest.

As to the order itself, the verdict must be one of acquittal. Among the most heinous crimes revealed by the history of ancient trials are those committed by the prosecutors, and among such criminals Philip and Clement are pre-eminent. Cupidity was at the bottom of the whole proceedings. In Fuller's words, the bees must be burnt if the honey was to be got.

III. JEANNE D'ARC

I COME to what is sometimes spoken of as the most memorable trial in history, one to which men and women turn more and more as it recedes into the past. I mean the trial of Jeanne d'Arc. There is still obscurity as to some points in the story. Certain documents likely, if ever found, to prove of great value are lost; it is not probable that the depositions obtained by the commissioners who were sent to Domrémy and the neighbourhood by the prosecution to collect materials for the purpose of examining her and framing charges against her will ever come to light; they were, we may assume, destroyed by those who found that they were not what they wanted; they told too much in her favour. Fortunately there is, all things considered, a remarkably complete report of the trial which ended in her conviction, and of the proceedings in the second trial instituted after her death to quash the judgment in the first. Were Jeanne d'Arc not what she is, a memorable figure, were she not the symbol of all that is heroic and pure, her life one of unequalled marvels, her trial would be noteworthy as the most perfect known example of a trial under the ecclesiastical system. To the lawyer (and it is solely as a lawyer that I wish to look at the trial) it is profoundly interesting. Every phase of that system is illustrated in the first trial; and in the second we have, so to speak, the comments and criticisms of experts upon the proceedings in the first. It is as if we had the best of all commentaries, the decision of a court of review or appeal.

The trial has significance for another reason. It is

the first leading case in a long series of trials, the scandal and reproach of medieval criminal law. I do not think that we shall understand the case if we view it as an isolated incident, or forget that it is one of the first of great note—perhaps I may say the greatest in all times—of the long series of trials for sorcery. About the time when she suffered at the stake began in intensity the epidemic fear of witchcraft which for two and a half centuries raged all over Europe. True it had not then attained its full virulence; but the causes which led to its spread were all at work and, as I shall show, led to her condemnation.

You are all, of course, familiar with the chief events in her life.

In 1429 the fortunes of France were at a low ebb. From the time of Agincourt there had been almost unbroken successes by the English army. The death of Henry V had not changed matters. Paris was in the hands of the English. There were faction and discord in the land. Charles VII was virtually a fugitive and his followers were scattered and dispirited. The city of Orléans had for five months held out, but it was very hard pressed. It had made overtures to the Duke of Burgundy, the ally of the English, to surrender. The end was not far off. I need not retell the story so often told, how in these straits, she, a maiden of seventeen, coming from her village home in Domrémy, in the marches of Lorraine, went in the winter of 1429 to the King's Court and told Charles of her mission; how she was at first slighted and disbelieved; how in the end she was believed; how she pressed the French to act; how she addressed to Henry VI and the regent Bedford and the English army before Orléans a demand for the surrender of all cities in France; how she told Bedford she was ready to make peace if they abandoned the land and made compensation for the damage which they had done, otherwise she was commissioned by God to drive them

out with a shock of arms such as had not been seen in France for a thousand years.

To the English soldiers she sent a special letter saying :

“ You archers and other men at arms who lie before Orléans, go back to your own country in the name of God. If you do not, beware of La Pucelle, and soon you will remember the damage she does you. Take my word for it, you will never hold France, which belongs to the King of Heaven, the son of the blessed Mary. She shall be held by Charles.”

To the commanders of the English—Suffolk, the dreaded Talbot, Scales and others—she sent a missive saying : “ Make answer that you will conclude peace at the city of Orléans. If you do not, so much the worse for you.” To the English regent her haughty message was :

“ Duke of Bedford, you who call yourself Regent of France for the King of England, La Pucelle begs and requires you not to bring about your own destruction. If you do not what is reasonable, the French will perform the finest feats of arms ever done in Christendom.” ¹

It is not surprising that, as the chronicler says, the English commanders took no heed of these communications. But that this rustic girl of seventeen should have had so much power over men of rank, ecclesiastics, soldiers, and statesmen of experience, that they sanctioned the sending of these haughty messages, speaks marvellously as to her ascendancy, speaks even more powerfully than the testimony we have of the affection which she inspired among the common people and the awe with which the soldiers regarded her. I need not tell you how Orléans was relieved, the English abandoning the siege; how new heart

¹ J. Quicherat (ed.), *Procès de condamnation et de réhabilitation de Jeanne d'Arc*, iv. 306-8.

was put into the French; how success followed success; how city after city fell into their hands; how, beginning her work in February 1429, she was able to be present at the crowning of King Charles VII on the 17th July in the Cathedral of Reims. She then seems to have wished to return to her village; her mission was complete; but the King pressed her to remain and she obeyed. Then, as you know, owing to the energy of the Regent Bedford and the lethargy of the French King, the tide turned against the French. An assault upon Paris failed and Jeanne was wounded; and in fighting with the Burgundians, who had come to the aid of their ally, she was taken prisoner on the 23rd May by the Bastard de Vendôme, a follower of Jean de Luxembourg, Comte de Ligny. The English were exultant, for, as Monstrelet says, they valued her capture more than five hundred fighting men, for there was no captain or chief of whom they were so afraid.¹ Then took place long negotiations for her surrender, her captor refusing to hand her over until his price due under the laws of war was paid, and it was with difficulty that Bedford raised the sum, which was large. She was carried from one prison to another, until she was handed over to Warwick and lodged in the castle at Rouen, where she was heavily ironed.

And now as to the trial, which I propose to look at mainly from the point of view of the lawyer, and consequently to ignore some aspects of greater importance. Months passed before she was brought to trial; not until the 3rd January 1431 were letters patent issued ordering her to be delivered to Pierre Cauchon, Bishop of Beauvais, a partisan of the English, and not until the 19th February, when the articles of accusation were prepared, can the trial be said to have begun. We shall not appreciate aright her demeanour and conduct unless we bear in mind

¹ J. Quicherat (ed.), *Procès de condamnation et de réhabilitation de Jeanne d'Arc*, iv. 402.

that she had been in prison and in chains nearly a year before she appeared before her Judges.

And first as to the nature and composition of the Court. It was the Court of the Bishop of Beauvais, and he presided in it; but, as was then common in such courts in a trial for heresy or sorcery, there was associated with him a representative of the Inquisition, in this case Jean le Maître, vicar or deputy Inquisitor in the diocese of Rouen for Jean Graveran, General Deputy of Inquisition of France. Le Maître seems to have disliked the business. "Threats are said to have been freely employed" ¹ to overcome his repugnance, and he continued to raise doubts as to his powers to take part in the proceedings until he received a special commission from Graveran.

Along with them sat a large body of assistants or assessors (abbots, priors, doctors of theology, etc.). In all there were some 95 of them. In the public sittings the number varied generally from 14 to 16; but in the sittings of the 22nd of February there were 48. I mention these figures because they indicate, as does so much else in the circumstances of the trial, that the case was deemed one of exceptional gravity and difficulty, one in which all available aid should be obtained. The trial falls into four divisions:

- (1) the preparatory proceedings, with a view to frame the charges against the accused;
- (2) the trial, in our sense of the word, or the ordinary process, as it was termed;
- (3) the first sentence pronounced against her, which was one of imprisonment for life;
- (4) the second sentence after her so-called abjuration or apostasy, namely, the sentence that she was to be burnt as a sorceress or a heretic.

As to each of these stages or divisions I would say something. There are, as you know, two great systems of trials. One is that known to this country

¹ H. W. Lea, *History of the Inquisition in the Middle Ages*, iii. 362.

and now generally adopted in civilized countries, in which an accuser comes forward and formulates precise charges which he offers to prove by evidence. In the secular courts, speaking generally, the prosecutor must state his case at the outset, show his hand, make good his accusations. There is another system now generally discredited, but at the time of which I speak in full operation in all ecclesiastical courts and to some extent adopted in secular courts, in which an accused is arrested on suspicion, no precise charges are made, but a case against him is gradually built up by examination, repeated at discretion in private. Such was the system in operation in the ecclesiastical courts in France; and the preparatory process, as it was termed, consisted in this case in interrogating Jeanne d'Arc chiefly in prison, with a view to obtain material upon which to found charges of sorcery and heresy, a course which shocks one's sense of justice, but which was entirely in accordance with ecclesiastical law.

Obviously there was great difficulty in framing the charges. A commission had been sent to collect evidence against her in Domrémy and the neighbourhood. It had been a failure. It brought back only good reports of one whom country folk knew as a maiden of pious and blameless life. The depositions which were then collected have never seen the light. We may be sure that if they had contained anything to her discredit they would have been published. The aim of the prosecution was to fasten upon her charges of sorcery and heresy, two things then confounded, and to build up accusations upon her statements as to the voices which she heard and the visions which she saw. The difficulty was to explain away her manifest zeal, her fervent piety, her devotion to the Church and its rights, her purity of life. The extraordinary length of the proceedings—they lasted from the 9th January to the 24th May—and so many other characteristics of the trial testify to the extreme

difficulty experienced in arriving at the end in view. So weak was the case at the outset that there was, I am inclined to think, a possibility of an acquittal. Not that acquittal by the ecclesiastical courts would have saved her; she would not have escaped. The English were very envious of her death, as the chronicler has it. The King, or rather Bedford, had paid dearly in order to get her in his power; he had given 10,000 livres in gold and a rent-charge of two or three hundred livres to her captor. In the letter which Henry wrote to the Bishop of Beauvais when she was made prisoner he intimates ¹ that he will keep her even if she is acquitted. It is a letter which throughout assumes her guilt. It is notorious, he says, that a certain woman, abandoning the habits and garments of her sex, which is contrary to the Divine Law and abominable in the sight of God, has, clad as a man at arms, done many cruel deeds of bloodshed and seduced and abused simple people, so as to lead them to believe she was sent by God and had knowledge of divine secrets; and because she has been suspected of superstitions, false doctrines, and other crimes of high treason against Heaven, and also because he has been requested by the University of Paris, he hands her over to the Bishop to be interrogated and proceeded against according to the ordinances of the Divine or Canon Law. Jeanne is to be "bound and delivered really and in fact by our men and officers who have guard over her"—a command, by the way, which was never carried out. The end of the letter left no doubt as to the intentions of the King.

"Anyhow it is our intention to have and again to try before us this Joan, for that she was not convicted nor attainted of the above-mentioned cases, or of any one of them or of any other touching or regarding our said faith." ²

¹ *Procès*, i. 19.

² *Ibid.*

There were difficulties in the way of prosecuting Jeanne before a subservient Court, difficulties perhaps not to be surmounted but for two facts which I would emphasize. There had come into existence and had by this time been perfected a terribly potent machine, one unsurpassed in efficacy for turning innocence into guilt; one by which all securities for fair play were removed; a system under which, even when physical torture was not resorted to, the accused was by repeated examination, by threats, by tricks and devices, by false suggestions, by banishing all counsel or friends, and by lowering the diet, reduced to a condition in which the prosecutor wrung out of his victim what he desired.

"The art of interrogation was a great one, a terrible and too often treacherous art, which placed the accused at the mercy of the judge. The accused had to reply without the assistance of counsel and without knowledge of the charge. Moreover, he swore to tell the truth."¹

The accused was unable to call witnesses; few were bold enough to act as counsel in proceedings which exposed them to the risk of being prosecuted for heresy; conviction was a matter of course.

In telling the story of the trials of the Templars in 1307-13 I had occasion to describe this machine, and it was perfected in the interval. It is true that Jeanne d'Arc was brought before a bishop's court, but an Inquisitor was joined with him, and, as Dr. Lea has explained, the methods of the Inquisition had by this time been perfected. In the second half of the fifteenth century appeared the *Directorium Inquisitorum* of Eymericus, which shows the system in its completeness extended to all ecclesiastical courts.

I have pointed out that in its early days the Church treated sorcery with comparative mildness.

¹ A. Esmein, *Histoire de la procédure criminelle* etc., p. 142.

nounced magical practices and beliefs chiefly because they were absurd and incredible. But from the time of the crusades the theory of the existence and potency of diabolic agencies takes more and more definite shape. For reasons which I am unable wholly to explain, the attention of men was turned as it never before had been to those occult and malign powers believed to be everywhere at work. The most spiritually minded did not escape this infatuation. St. Bernard has much to say as to the devil and his power over men and his many shapes :

“ He feigns likenesses, he paints images, he puts on colours, he twists all things in the chamber of the mind, if by any chance he may win agreement and deprave the will. He brings forward horrible things concerning the Divinity, terrible things concerning the Faith, and astounding things concerning the founding of the Faith; and into the bowl of the mind he pours deadly draughts which the burdened sinner shudders to discharge in confession.”¹

What hitherto was loosely held was accentuated and strengthened by the teaching of St. Thomas Aquinas. Largely through his influence the position of the Church had become fixed and decided and militant in regard to witchcraft and sorcery.

The text-book which every man who sat upon that Court looked to as his infallible guide was the *Summa Theologiæ* of St. Thomas Aquinas (born 1224 or 1227; died 1274), which for a century and a half had been taught in every University. He had systematized and reduced to a scientific form what had been vague and fluctuating. In his commentary on Job² he had discussed the power of demons “ to

¹ Migne, *Patrologia Latina*, clxxxiv, col. 841. [The citation is from a sermon attributed not to St. Bernard, but to his secretary, Nicolas de Montieramey.]

Aquinas, *Commentary on Job*, c. i, lectio 3.

cause disturbance of the air, to raise gales, and make as it were fire fall from heaven." Elsewhere he had spoken of heresy :

" Concerning sorceries, however, it is to be noted that some said that witchcraft is nothing; that this came from unbelief, because they wished that devils were nothing but the imagination of men—that is to say, that men imagined them and, terrified by that imagination, came to harm."

He rejects that theory and lays it down categorically that the only true explanation of occult agencies was this : " The Catholic faith, indeed, wishes that devils should be something, and should be able to injure by their works." ¹

I do not say that Aquinas was the cause of the death of Jeanne d'Arc. But each person who cross-examined her had in mind the teaching of the Angelic Doctor. It is usually supposed that the war against sorcery began with the Bull of Innocent VIII (December 1484) and the publication and wide dissemination of the *Malleus Maleficarum* in 1489—a book which, appearing about the time when printing became common, spread the doctrine as to witchcraft into circles which before had known little as to it and brought about the destruction of thousands of human beings. Strange that one of the first effects of the new art of printing was to give prevalence and power to a pernicious superstition. The undoubtedly great influence of the Bull of 1484 and of this book notwithstanding, I think I am right in saying that the infatuation which had seized learned and unlearned on the subject of sorcery had begun by 1430, and, what is important, that from the time with which we are concerned men and women were no longer equally prosecuted for this offence, but that women were henceforth specifically singled out. Roughly speaking, the trial of Jeanne d'Arc marks the period

¹ St. Thomas Aquinas, *Quodlibet*, xi. 10.

when the wizard gives place to the witch, when women became the subject of special persecution.

This doctrine as to the prevalence of evil spirits had passed from the books and the teaching of learned men into the beliefs of the people. Before this they had had their own world of spirits and sprites and elves and fairies and goblins, the tenants of wood and grove, hill and stream; some of them evil, some wayward and fantastic; but for the most part not unfriendly; open to propitiation, and some of them kindly. But under the influences of which I speak all this was changed: theology had poisoned mythology; it had destroyed the good spirits; and where men had seen varied shapes, beautiful, mysterious, and romantic, they were taught to see only the devil, their enemy, and his many agents always at work. The very conscience itself of the best of men when it spoke loudest—when the soul heard as it were an inward voice bidding it obey a divine law—was made the ground of condemnation; those inward monitors were the most alluring promptings of Satan. Leibnitz designated the thirteenth century as the stupidest of all centuries, and Roskoff in his learned history of the devil says that that was the *eigentliche Teufelsperiode*—the period in which the devil had full ascendancy. But it lasted unimpaired until, and long after, the trial with which we have to deal.

I come to the second stage of the trial, the ordinary process as it was called. John d'Estivet, the promoter or prosecutor, prepared certain articles of accusation which Jeanne was to be called upon to answer upon oath. They were seventy in number, drawn up with minuteness and skill and many of them turning upon subtle distinctions. To each of these she was required to answer, and upon such answers were founded other questions, some of them designed to entrap or confuse her. An important episode in this second stage was the submitting of a series of propositions extracted from the evidence of the accused to sixteen

doctors and six licentiates and bachelors of theology for their opinion. Almost all of them were more or less unfavourable to her. Some of the answers were based on assumptions contrary to the evidence.¹ There was one exception to the tone of hostility. Master John Carin, Canon of Rouen, said he thought the statements were in accordance with the laws of the Church.² There are signs that the Chapter of Rouen shirked responsibility and that there was difficulty in getting a majority³ adverse to the prisoner. Another circumstance of the trial was the part taken in it by the University of Paris, which at that time possessed transcendent authority in law and theology. Though not binding on courts, its opinions had much the same weight as those of the *Jurisconsulti* at Rome. At this time the University was under the domination of the English. It had just taken a strong line in denouncing magic and sorcery. It had also addressed a letter to the Bishop of Beauvais urging him to proceed with the prosecution in order that this scandal to the faith might be removed, and pressing for the trial to take place in Paris, where there were plenty of learned men who would consider the matter maturely. The result of appealing to the University was no doubt what was expected, altogether adverse. The so-called revelations were either pernicious falsehoods or superstitions, and apparitions and revelations proceeding from evil spirits, Belial, Satan, and Behemoth. Her wearing man's dress was declared to be blasphemy; she was a despiser of God and justly suspect of idolatry.

I say little as to the details of the second stage, and of the prolonged and pitiless cross-examination, resumed day after day, to which she was subjected. But this much may be observed—her demeanour and conduct, even as recorded in the unfriendly official narrative, are marvellous. Speaking with some experience of courts of law, and with some acquaint-

¹ *Procès*, i. 343.

² *Ibid.*, i. 353.

³ *Ibid.*, i. 353 n.

ance with the literature of trials, I know nothing in history comparable to her bearing under pressure and strain which would have broken the strongest and most heroic. It is not Bruno or Servetus or Galileo or Campanella that stands out beyond all others in the somewhat long history of martyrs under legal process. It is this village maiden with her courage, her union of faith, enthusiasm, and supreme sanity. The inner voices speak to her; she has visions; they do not dazzle her understanding or confuse her clear apprehension of practical things. "When she spoke of matters of state and war (*de regno et guerra*)," said one who was present at the trial, "she seemed moved by the Holy Spirit." ¹ Another witness says that he:

"well remembers that the questions to the same Joan were often interrupted; and difficult questions came from many people at once; and, before she had replied to one, another made some other inquiry, whereat she was ill content, saying: 'Let one do it after another.' And the speaker marvelled at the way in which she was able to answer the subtle and insidious questions put to her, such as a learned man would hardly have answered well." ²

The testimony of Manchon, the notary, who probably saw as much of her as did anyone, is:

"She answered now wisely enough, now simply, as may be seen in the record; and he believes that in such a hard case there were not sufficient resources within herself to defend herself against so many learned men had there not been inspiration." ³

Her cross-examiners, who were adroit and versed in all the little arts by which a witness is confused and entangled in contradiction, made much of the fact that she as a child had gone on May-day with others of her own age to the forest near Domrémy and had danced under an old oak which was associated with

¹ *Procès*, ii. 304.

² *Ibid.*, ii. 332.

³ *Ibid.*, ii. 342.

fairies. It was sought to entangle her in fatal admissions. Her simple straightforwardness foiled her interrogators; she had heard speak of fairies and their doings; but she does not believe in them; they are only sorcery.

It is worth noting that Gerson, the famous rector of the University, who refused to join in the demand for her prosecution, in recommending a revision, lays stress on her practical wisdom and sagacity :

“ It must be fully borne in mind that this Maid and the soldiers following her do not quit the paths of human wisdom by doing, namely, what is in itself such as to make God appear to be tempted more than is necessary.” ¹

One thinks of Socrates before the Heliastic Court. But, after all, we know of his demeanour before his judges only or mainly through the accounts of his affectionate disciples; her virtues and sagacity shine out through the record prepared by her enemies. It is not for me to say anything of her skill in war. M. Anatole France disparages it, and I do not dispute his decision on questions of strategy, though I may observe that the soldiers who fought along with her, and especially the English who fought against her, thought otherwise; and it must be plain that their terror of her prowess was at the bottom of the proceedings. The perspicacity of this young maiden in discerning the weak points of the besiegers of Orléans reminds one of the insight of a certain lieutenant of artillery who some four hundred years afterwards notes the vulnerable points of the defenders of Toulon. This much I must say, that one carries away from the trial the impression of a high practical intelligence united to faith and courage.

I will say little of the so-called abjuration or recantation of which the history is at some points obscure. That a pile ready to be lit was erected in

¹ *Procès*, iii. 303.

the cemetery of St.-Ouen; that there under threats and persuasion and promises and broken down with suffering, physical and mental, she put her cross to a document (for she could not read or write) is certain. But whether, as is not improbable, one document was substituted for another, is not clear. But it is absurd to suggest that she, with no one to counsel her, could understand the contents of either paper. Broken in body with long and repeated torture—for such the circumstances of her prison life were—fasting as she did, and exposed to acts of violence at the hands of evil men—acts so foul that her prosecutors ordered their removal—she could not appreciate what she was pressed to do. There was a struggle going on between the prisoner and the Court, another unseen struggle between the Court and the English. The latter were becoming impatient; they did not understand these delays; they wanted her made away with promptly; the exigencies of war demanded it, if the spell of her influence was to be broken. Now the Bishop of Beauvais, while ready to do their work and earn his right to the archbishopric of Rouen, wanted to preserve forms and appearances, and doubtless thought that he would serve his masters by ordering her perpetual imprisonment, and to that effect was the sentence of the Court which forms what I may call the third stage. It pronounces as follows :

“ We say and decide that thou hast most gravely sinned by falsely pretending to revelations and apparitions, by leading others astray, by believing lightly and carelessly, by prophesying superstitiously, by blaspheming God and the Saints, by sinning against the law, holy Scripture, and canonical decrees, by slighting God in His sacraments, by starting sedition, by apostatising, by falling into the crime of schism, and by going widely astray in the Catholic faith.”

But inasmuch as she had publicly abjured these errors the Court would be merciful, and accordingly condemned her to perpetual imprisonment, there to eat the bread of sorrow and drink the water of affliction, there to weep for things done, and there to do nothing hereafter that need to be wept for. It would seem that for a day or two she was willing to accept her fate and to conform to what was enjoined. Thus she consented to wear woman's dress. The English were vexed and furious at this ending to the trial, which did not meet their views. There is a story of a quarrel between the bishop and the chaplain of Cardinal Beaufort. Irritated at their delays the chaplain accused the bishop of being her partisan, whereupon the bishop gave him the lie; and we read too of the ecclesiastics being threatened with death by the English.

The sentence was given on the 24th of May. But when the bishop and some of his assessors visited her in prison on the 28th, they found her changed; she had taken again man's dress—perhaps because her keepers had cunningly removed her woman's dress, or, to quote the official account of what she said, "because it was more lawful and suitable for her to wear male dress while she was among men than to wear the dress of women."¹ She had not understood the promise which they said she had made; and they had not kept their promise to allow her to go to mass and to take off her fetters. Her courage had come back to her; the Divine voices had spoken to her again. Then, to quote the official report, she declared that she did not say or understand that she was recanting her apparitions, to wit, that they were St. Margaret and St. Katharine; and that all she did in signing a paper was from fear of being burnt, and that she revoked nothing but what was contrary to truth. Also that she would rather do penance once for all, that is die, than longer suffer

¹ *Procès*, i. 455.

imprisonment in the castle where she was in the hands of the secular power. Also that she had done nothing against God or faith, whatever they may have made her abjure, and as for what was in the document of abjuration, she did not understand it. Also that she now says that she intended to revoke nothing, unless it so pleased God. If her judges wish, she would take the woman's dress again. As to the rest she would do nothing more. After this the bishop, according to one witness,¹ said to the English who were waiting outside to hear the result: "Farewell, be of good cheer. It is done." And so it was. The end came swiftly. That was on the 28th May. On the 30th came the sentence which recited her errors, her promise to abjure them, her relapse, and pronounced her:

"a false pretender to divine revelations and apparitions, a dangerous perverter, presumptuous, a sorceress, a blasphemer of God and the Saints, slighting God Himself in His sacraments, a sinner against divine law, holy doctrine, and the decrees of the Church, seditious, cruel, apostate, schismatic, widely astray in our faith."

The sentence ended by declaring her "a limb of Satan, cut off from the Church, tainted with the leprosy of heresy," and condemned her to be handed over, lest she infect others, to the civil power.²

The final stage was in the market-place at Rouen, where, with a paper crown on her head marked "Heretic, Relapsed Idolator, Apostate," she was burnt. Her last-recorded act was her clasping the crucifix in the flames. Her persecutors' last acts were to tear aside the faggots to show to the crowd that she was in truth a woman and to cast her ashes in the Seine. Doubtless many thought that an evil deed had been done. But we find no clear evidence of a general revulsion. That the bishop and his

¹ *Procès*, ii. 5.

² *Ibid.*, i. 474, 475.

colleagues were uneasy is certain. They sought to manufacture fresh evidence against her based on alleged statements made by her in prison, statements which the notaries refused to sign. But they did not incur punishment or apparently general reprobation.

Not until 1450 was anything done to efface the sentence and to vindicate her memory. The King then commissioned Maître Bouillé to inquire into the matter and report to the Grand Council. A large amount of evidence was collected going to show the unfairness of the trial, not the least important and cogent being that of Manchon, the notary who prepared the official report. The opinions of some of the best canon lawyers were taken as to the validity of the proceedings and as to the twelve articles extracted by the prosecution from the confession of Jeanne. A suit was instituted at the instance of her mother and her two brothers against the heirs of Peter Cauchon, the bishop, who were cited, and who duly appeared. Sentence of contumacy was pronounced against Estivet the promoter, and Le Maître, the Inquisitor, who did not appear. A vast mass of evidence was collected: statements by soldiers of rank who had fought along with her, by those who had known her in Court and in prison; statements all testifying to her purity, her firm belief in her mission, and her courage in the presence of her judges; among such statements were those by men who in silence and without protest had seen her suffer. The proceedings lasted from the 7th November 1455 to the 7th June 1456, when the Commissioners delivered their judgment to the effect that the articles of accusation against her had been extracted from her evidence "corruptly, falsely, calumniously, deceitfully, and maliciously";¹ that aggravating circumstances had been fraudulently inserted; that the articles must be annulled as "falsely, calumniously, deceitfully drawn out, and not corresponding

¹ *Procès*, iii. 359.

with the same confession"; and, in view of her repeated requests to be allowed to appeal to the Holy See and the fact that her so-called apostasy was obtained by fear and duress, by the presence of the torturer and the threat of fire, the sentence and whole proceedings were declared "to contain deceit, calumny, injustice, contradiction, and manifest error of law and of fact." ¹

I quote this judgment and lay stress upon it, to show that in the opinion of contemporaries her condemnation was not a miscarriage of justice by honest men. That also is the impression which the trial leaves upon me. For a time I was inclined to see in the whole proceedings something like the scene in an African kraal when a howling mob of terrified naked savages dances round a wretched woman whom a witch doctor has smelled out. That comparison would be false. The trial was not the work of men carried away by fanaticism and sure that they were right, but of men who suspected that they were wrong, and who sought to attain their end while dividing responsibility. To her captors her execution as a sorcerer was, in modern phrase, a matter of military exigency; there were others seeking to imitate her; and an end must be put to the notion that Divine agencies were working for their defeat and expulsion from France. Not merely did they wish her to die, but in a particular way. Guillelmus de Camera,² a doctor of medicine who visited her in prison when she was ill, told how he and another doctor were sent for by Warwick and how the Earl told them that they must attend to her because the King would on no account that she should die by a natural death. The King had paid dearly for her and he would not have her die except at the hands of justice; she must be burnt, and they must look carefully after her that she might be cured. Finding,

¹ *Procès*, iii. 361. For defects of law see ii. 56, 64.

² *Ibid.*, iii. 51.

on examining her, that she was feverish, they recommended bleeding. But when they told this to Warwick, he said: "You be careful about bleeding; it is a ticklish matter; she might die," which would not suit the purpose of those who wanted a public execution for military and political ends.

Fear, hatred, a sense of shame at reverses at the hands of a woman, apprehensions of a rise of national feeling, actuated Bedford and Warwick. The judges and assessors had a mind to do "*bonne justice*"; to keep the letter of the law and to do the work of the party in power. On the whole proceedings there is the stain of hypocrisy as well as of cruelty.

I should have liked, had time permitted, to say something as to the celestial voices which she heard and to contrast them with the monition of the "*demon*" of Socrates to which I had to refer in speaking of his trial; in particular to contrast the manner in which each spoke of the internal monitor, the clear, matter-of-fact, candid statements of Socrates and the reticence or reserve of Jeanne d'Arc when questioned again and again by her judges as to the nature of the voices. But this subject would carry one too far. Three observations in conclusion I will make, and I crave indulgence for them because they travel somewhat outside the province of the lawyer, the limits which I have prescribed for myself. The first is to say how much I desire to see put into plain words, without adornment and without importation of sentiment, the story of her life, including the second trial, and that every school-child should read it. It is, or it might well be, the true modern epic; the story of all others embodying for this generation and those to come the ideal of all that is heroic, an ideal which makes a nearer appeal to the men and women of to-day. For her own time did not recognize her, nor did subsequent ages. I have been struck by the little evidence of recognition of her place and work. I have come upon a frigid epigram and some poems

which put her in a false light. It is noteworthy that the two greatest geniuses of the countries which did her wrong misunderstood and disparaged her. I have met in recent times with no generous and adequate words until the last century. I will not say that she was discovered by the nineteenth century, but only then was she placed where I believe she will remain.

The second observation I would make is to bid you remember, in extenuation of the age which suffered all this injustice to be done, that side by side with brutality and coarseness were purity and exalted heroism; that if there were many oppressors, there were also many martyrs; that if among many life was coarse and mean, there were others who heard and obeyed Divine voices which, rationalize them as much as you may, were the calls and monitions of tender or imperious consciences, and that the very legal system under which all this cruelty was wrought was intended to do what modern criminologists say is the true aim, to cure rather than punish the guilty. The age of St. Francis was not far off from that which burnt Jeanne d'Arc. The *Imitation* was written by one who conceivably might have known her. These conjunctions or contrasts are among the mysteries of life. And terrible to accused persons though the Inquisition was, their fate in a secular Court might have been worse.

"The Inquisition was concerned exclusively with belief; acts were of interest to it merely as evidence of the beliefs which they inferred, and all heresies were equal in guilt, whether they consisted in affirming the poverty of Christ or led to demon worship, pacts with Satan, and attempts on human life. The sorcerer might, therefore, well prefer to fall into the hands of the Inquisition rather than to be judged by the secular tribunals, for in the former case he had the benefit of the invariable rules observed in dealings with heresy." ¹

¹ Lea, iii. 449.

My last observation is to repeat my impression of her character as derived from a study of the trial. It is one of those rare unions of strength, heroism and sanity, with mysticism, sagacity and grasp of facts. Her life in the invisible world did not blind her practical wisdom, conspicuous in the strange atmosphere of courts, and doubtless also in the more familiar scenes of sieges and battle-fields.

IV. GIORDANO BRUNO

TO-DAY I take an illustration from the ecclesiastical system of procedure which, as I have remarked, profoundly influenced that of the ordinary secular courts of law—a system constructed with scientific skill, which has not been sufficiently recognized. Of it may truly be said what Monsieur Fournier remarks generally :

“ The ancient constitution of the Church appears here as a majestic monument, to the construction of which Christian Rome brought, together with the vigour of the new faith, the traditions of government which she had received from the masters of the world.” ¹

I have chosen the trial of Giordano Bruno as typical of many trials. It is perhaps the most nearly complete account which we have of one kind of trials ; I mean trials of men who suffered the extreme penalty on account of their opinions ; those who were the victims of a marvellous system of censorship over thought ; a long list, including Vanini, Campanella, Galileo, Servetus ; some of the best-known benefactors of humanity, and a crowd of forgotten men who paid with their lives for their zeal and enlightenment. I do not propose to speak of their work or their teaching or their place in history, except briefly and incidentally. I am not concerned with philosophy or general history. I regard these trials chiefly as events in legal history ; examples of various modes of procedure, of the many ways in which men have

¹ P. Fournier, *Les Officialités au Moyen Âge*, p. 1.

satisfied themselves that their fellows merit punishment. One consequence is that I shall have to leave out some of the chief elements of interest, to dwell on the various legal steps in the proceedings; to speak of matters which you may justly think of less moment than those omitted.

To understand the trial of Bruno something must be said of his contemporaries and of the circumstances of his life.

He was born at Nola in Calabria in 1548, in momentous, restless times; when new and subversive ideas were in the air; when the talk was of new discoveries of all sorts; when there was much questioning as to old beliefs; some thirteen years before Bacon, whose attitude to scholastic philosophy was to be not unlike Bruno's, many of whose most memorable sayings seem echoes of Bruno; some five years after the death of Copernicus, of whose teaching he was to be the passionate exponent; some sixteen years before Galileo, who was to suffer for much the same offences before the same tribunal; some sixteen years before Shakespeare, in whose sonnets and some of whose plays, e.g. *The Tempest* and *Hamlet*, critics have found a curious resemblance to Bruno's poems; some eighty years before Spinoza, whom he was to influence deeply; nearly one hundred before Leibnitz, whom also he influenced. It was a time of marvellous changes. The world had been enlarged by the discovery of America; the heavens indefinitely expanded, new worlds revealed by the teaching of Copernicus: Luther was dead some two years; the Reformation was being met by a counter-movement; and, what for Bruno was all-important, there was a revival of activity on the part of the Inquisition. It was a bad time for men who thought and spoke freely, and it was a time which tempted bold spirits to do so. Bruno was born in the full tide of the Renaissance, and the man himself was typical of it. The son of a soldier and perhaps meant for that profession, he had

become a Dominican without any vocation. Turbulent, wayward, somewhat quarrelsome, thirsting for knowledge of all sorts, he early got into troubles from which he never extricated himself. As he said, if you button the first button of your coat wrong, the rest gets awry. And so it was with him. His questions and bold remarks as a young monk aroused the suspicions of his superiors as to his heresies. He was reprimanded more than once. He was denounced to the Inquisition at Naples,¹ which cited him to appear; in fact two suits against him were instituted. He did not obey, but fled, and was condemned as being contumacious. From that time his life was passed in wandering from country to country. He is indeed the very type of the vagabond scholar, then so common. He went from place to place, lecturing, talking, declaiming, maintaining paradoxes, a restless, roaming spirit; never out of controversies, generally conducted with asperity, and rarely long anywhere without a quarrel.

Bruno never remained long in one place; Geneva, Toulouse, Paris, Oxford, Marburg, Prague, Frankfort, were successively visited. A wandering life such as his was possible in a way which is not so now. European scholars were more cosmopolitan then than now. All men of culture knew Latin. Many spoke it fluently. The Universities gave an opening to them. If they were Churchmen, the monasteries afforded them lodging. Gifted and fascinating, Bruno made friends as well as enemies wherever he went. He was in high favour with Henry III of France, and in England he lived at various times from 1583 to 1585 as a guest in the house of Michel Castelnau de Mauvisière, the French ambassador. He knew the statesmen of the time, Walsingham and Burghley and Mendoza. He was the friend of Sir Philip Sidney and of Fulke Greville and probably of Spenser. It

¹ D. Berti, *Vita di Giordano Bruno da Nola* (1868), pp. 54, 57.

has been conjectured that he knew Shakespeare. But he seems to have returned to France before Shakespeare came to London. He did not suffer fools, and still less pedants, gladly. Quarrelsome, disputatious, brimful of novelties, he generally soon made every place too hot for him. He alternated between flattery and abuse. He was a firebrand, assertive, combative. There was in him no meekness, no reticence as to his merits; when he was smitten, he struck back. In his addresses to Oxford University he describes himself as—

“ professor of a purer and less harmful learning, known in the chief universities of Europe, a philosopher approved and honourably received . . . a waker of sleeping minds, tamer of presumptuous and obstinate ignorance, who in all respects professes a general love of man, and cares not for the Italian more than for the Briton, male more than female, the mitre more than the crown, the toga more than the coat of mail, the cowed more than the uncowed; but loves him who in intercourse is the more peaceable, polite, friendly and useful; whom only propagators of folly and hypocrites detest, whom the honourable and studious love, whom noble minds applaud.”¹

No single phrase would sum up a singularly varied nature in which was a bit of Shelley, much that is akin to Spinoza, and an element of extravagance and buffoonery which recalls Rabelais. Added to all a certain devouring restless activity; ardour about invisible things; obsession, I might even say intoxication, with the effects of the great discoveries of his time, and a certain blind rush, as it might seem, to destruction. “That I shall sink in death,” says one of his sonnets:

|| “That I shall sink in death I know must be,
But with that death of mine what life will vie?”²

¹ J. L. MacIntyre, *Giordano Bruno*, p. 22.

² *De gl' heroici Furori*, 3rd Dialogue, Sonnet 16.

To Bruno Copernicus's teaching was not, as to many of his contemporaries, a mere hypothesis; it was a truth to be preached with passionate enthusiasm in and out of season. To him that time when the magnitude of the universe first dawned upon men, in which the aspects of the heavens and the earth were changed, the conception of the infinitude of space and the plurality of worlds opened up, seemed the Great Divide, the true watershed of the world's history. Even now one sees a certain glow in his pages, one feels a certain heat in his comments, when he touches that theme. He delights in endless metaphors. He is inspired by that enthusiasm or rapture which combines man with God.

"It seemed to Bruno," and here I quote from Höfding,¹ "as if he had never breathed freely until the limits of the universe had been extended to infinity, and the fixed spheres had disappeared. No longer now was there a limit to the flight of the spirit, 'no 'so far and no farther'; the narrow prison in which the old beliefs had confined men's spirits had now to open its gates and let in the pure air of a new life."

Long before his trial, he had written in verse and prose, much especially on philosophy, the purport of his teaching being often uncertain; his ideas so wrapped in metaphors and allegories as to be elusive, but running through most of them was a belief in the unity of all nature, in an endlessly enduring universe, in the infinity of space, in the plurality of worlds; a vein of strong antagonism to the teaching of Aristotle, then dominant; a protest against authority; "an attempt, very remarkable for the time, to unite a fundamentally idealistic conception with the scientific conception of the world."² He joins hands in the past with Plato and Plotinus and Nicholas of

¹ H. Höfding, *A History of Modern Philosophy*, i. 129.

² *Ibid.*, i. 139.

Cusa as to the original unity of all things, but he is also "the precursor of Lessing's and Kant's idea of eternal striving as the highest; as, too, his attitude towards the idea of the golden age reminds us of the modern conception of the history of civilization."¹

Höfdding, from whom I have quoted, describes his teaching as "the greatest philosophical thought-structure executed by the Renaissance."² He is among the first of the moderns.

Known as Bruno was all over Europe, for the tendency of his copious writings,³ familiar to the Inquisition, already defendant in two prosecutions, and condemned for contumacy by one tribunal, it was sheer madness for him to venture into Italy, from which he had fled to escape punishment and where he must expect to be punished as contumacious. It is true that he went to Venice, which was at that time not only distinguished among Italian states for fostering learning, but was also a city of refuge for many who were not safe elsewhere. Its courts, too, had a high reputation. He would be less in peril there than anywhere else. But it was madness to venture there, so some of his friends thought. It has been suggested that he went in the hope of being reconciled to the Church by dedicating a work to the new Pope, Gregory XIV, less intractable than his predecessor, Sixtus V. Probably he would not have gone to Venice but for his having been lured there by one who professed to be his friend and was his pupil, Giovanni Mocenigo, a member of a noble Venetian family of that name, a man of weak, vain, and envious disposition, who was desirous to be taught by Bruno certain secrets as to the memory (*secreti della memoria*) of which he believed Bruno was the depository. With some plausibility it has been sug-

¹ *Ibid.*, i. 148.

² *Ibid.*, i. 110.

³ *La Cena de le Ceneri, De la Causa, principio et Uno, De l' infinito universo et Mondi, Spaccio de la Bestia trion ante, Cabala del Cavallo Pegaseo, De gl' heroci furori, etc.*

gested that Bruno fell into a trap set for him by the Inquisition.

“ Mocenigo had been one of the Savii all’ Eresia—the assessors appointed by the State to the Inquisition Board in Venice—and was therefore familiar with the intrigues of that body. He was also under the influence of his Father Confessor, by whose orders he denounced Bruno. The proceedings make it extremely probable, therefore, that the Inquisition laid a trap for Bruno, into which he unsuspectingly walked.”¹

This conjecture cannot be accepted. Those who formed such a plot would not have given him the many opportunities of escaping which he had.

Bruno arrived in Venice in the autumn of 1591. Not until the 23rd May 1592 was he arrested and put in prison. There is the further circumstance, as pointed out by Miss Plumptre,² that he spent eight months on the road, staying at Zurich and Padua. The Inquisition did not do its work in this dilatory fashion. It struck, when it did strike, promptly. In the envious, superstitious, narrow nature of a pupil disappointed at not having acquired the secret knowledge which he hoped for and paid for, we have explanation enough of the action of Mocenigo.

Bruno was arrested by Mocenigo on the 23rd May 1592, and handed over to the authorities. The tribunal before which he was brought was the Inquisition. That of Venice had distinct features of its own. ♦ Its origin and composition were peculiar. It was not a mere dependency of the Court of Rome. The great champion of the rights of the Republic in its conflict with the Papacy, Paolo Sarpi, wrote a work in which he describes the origin of the Inquisition in Venice and its relations to Rome. He insists that :

“ The office of the Inquisition in this state is not

¹ MacIntyre, p. 68.

² C. E. Plumptre, *Studies in Little-known Subjects*, p. 120.

dependent on the Roman Curia, but belongs to the Most Serene Republic, and is independent, being erected and set up by the same, and established by agreement and concordat with the Apostolic See; and therefore it ought to be governed by its own customs and ordinances, and under no obligation to take orders from elsewhere." ¹

The Republic did not admit that the tribunal was a wholly ecclesiastical institution. Sarpi emphatically dwells on this :

" Every criminal trial has three parts : the examination of the *ratio delicti*, the examination of the facts and the sentence. ²

" The first examination, that is to say, what opinion is heretical, has always been an ecclesiastical matter, and cannot in any way belong to the secular power . . . but the examination of the facts, whether the accused be innocent or guilty, for the purpose of awarding the punishment ordained by the statutes, and in either case the sentence of absolution or of condemnation, entirely belong to the secular power." ³

As early as 1249 the Government of Venice took a line of its own ; it appointed men of its choice to sit along with ecclesiastics in heresy cases. ⁴ Accordingly, the tribunal of the Inquisition at Venice was unlike the ordinary tribunal ; it was composed of the Papal Nuncio, the Patriarch, the Padre Inquisitore and three assistants known as the Savii all' Eresia, whose presence was requisite for the validity of proceedings. They were nominated every year by the Government. They were sworn to conceal from the doge and senate nothing which was done by the Holy Office and to suspend all proceedings which they deemed contrary to the laws or customs of the State or the secret instructions which they had received ; restrictions

¹ P. Sarpi, *Discorso dell' Origine, etc.* (1639), p. 36.

² *Ibid.*, p. 20.

³ *Ibid.*, pp. 21, 53.

⁴ *Ibid.*, p. 33.

which the Court of Rome sought to remove but to which the Government of the Republic firmly adhered.¹

In earlier lectures I have described the course of a prosecution under the ecclesiastical system. It was derived from the later Roman law of procedure. To quote M. Fournier :

“ The procedure in use in the ecclesiastical tribunals at the period in question is that of the Code and the Constitutions modified and simplified by the Decretals. . . . The basis of this procedure is to be found in the compilations of Justinian.”²

I may again mention the chief steps in a prosecution conducted under this system :

(1) The initiation of proceedings, which might be in three ways : (a) by accusation, as it was called, which took the form of an *inscriptio libelli* containing a definite charge by a definite accuser, a method rarely used ;³ (b) by denunciation made secretly by an informer, the denunciator or informer sworn to maintain secrecy as to the matters alleged against the accused⁴ (this became the common method) ;⁵ (c) by motion on the part of the Court itself, a method introduced in 1198 by Innocent III, a Pope who was a great lawyer as well as statesman.⁶

(2) Next the preliminary inquiry, secretly conducted, to ascertain whether there was a case against the accused. Witnesses were called, their names being carefully kept from the accused. “ Let the Inquisitor beware lest he reveal the accusers to the accused ” was a maxim of the system.⁷

(3) Next the arrest and imprisonment.

¹ P. van Limborch, *Historia Inquisitionis* (Amsterdam, 1692), p. 63.

² Fournier, p. 129; see also for ecclesiastical procedure, N. Munchen, *Das kanonische Gerichtsverfahren und Strafrecht*.

³ As to *libellus*, see Fournier, pp. 131, 242.

⁴ Limborch, p. 263.

⁵ As to procedure by denunciation, Fournier, p. 256.

⁶ *Ibid.*, p. 268.

⁷ Limborch, p. 261.

(4) Then came the interrogation of the accused, secret also; it might be before the full Court or in prison; it might be frequently repeated and also without communication of the names of the witnesses against him. There were elaborate rules, founded on long experience and a profound knowledge of mental pathology and of the weakness of human nature, for breaking down every form of constancy and for working upon every motive; threats, promises, flattery, suggestions of confessions by accomplices, every artifice, and if need be, torture, were freely used.¹ Reading the advice given and precepts enunciated by Eymeric in his *Directorium Inquisitorium*, one sees how crude and unscientific are the tricks and devices of modern cross-examinations as compared with those in use in this tribunal. Eymeric² treats "of the ten ways of heretics, whereby they seek to conceal their errors:

1. The first is by verbal equivocation.
2. The second way of evasion and sophistry is by extension of the proposition.
3. By twisting the question or inquiry.
4. By pretended wonder at the words.
5. By subterfuge of words . . . if he does not answer on oath concerning what he is asked but by telling the truth as to what is not asked.
6. By obvious transposition of words.
7. By justifying himself.
8. By pretended weakness of body.
9. By assuming stupidity or foolishness.
10. By appearance of outward holiness.

"But they have many and various other ways of deceiving and of disguising themselves, which utility approves rather than skill, as is found in their trials."

I doubt whether more intelligence has ever been

¹ Limborch, ch. xiv: "Quibus artibus Inquisitores e captivis confessionem elicere studeant," p. 277.

² N. Eymericus, *Directorium Inquisitorium* (1607), 3rd part, p. 430.

put at the service of law than in devising and working the machinery of this system, which did untold evil.¹

(5) The last step in the proceedings was the sentence of the court, which might be either acquittal or some form of ecclesiastical punishment; or the accused might be delivered over to the civil power, to be dealt with "without effusion of blood," the correct and polite description of being burnt.

In name, at all events, the court had all the modern theories as to punishment; it rarely inflicted vindictive sentences; they were chiefly curative or medicinal for the good of the soul; it administered probationary or conditional sentences; in form it curiously anticipated the teaching of modern criminologists.

I sum up the features of the system in saying that there were no pleadings in public, no production or confrontation of witnesses, no cross-examination of them, no right to be represented by an advocate,² or even to call witnesses, and that the court was at liberty to disregard all forms and proceed summarily.

Certain parts of the proceedings may remind you of modern theories of penal reform. But the substance of the system recalls the delation by informers under Tiberius and Nero, which Tacitus pictures, a system which put every man's life and fortune at the mercy of secret enemies or envious busybodies.

And now as to the steps taken in this case.

23 May 1592. Denunciation of Bruno by Mocenigo to the Padre Inquisitore, as Mocenigo explained, "under pressure from my conscience and by order of my confessor." He charges him with grave heresies; states that Bruno had had difficulties at Rome with the Inquisition. In his denunciation he mentions two witnesses, Ciotto and Bertano, and he encloses copies of three books by Bruno as well as of a small work (*opereta*).³

Second denunciation—perhaps prompted by his

¹ Gonsalvius, quoted by Limborch, p. 281.

² Limborch, p. 282.

³ Berti, p. 327.

confessor 25 May 1592. Mocenigo tells of a conversation which he had with Bruno, who said that he did not fear the Inquisition because he did not remember having said anything evil, or if he had done so he had said it only to Mocenigo.¹ On the 25th of May the denunciation is presented by the Padre Inquisitore to the Holy Office, as it was called.

Then, as was the practice, some witnesses who were carefully concealed from the prisoner were called; in this instance, the two booksellers mentioned by Mocenigo who had met Bruno at Frankfort. They had little to say for or against him, except that one said that the prior of the Carmelite monastery at Frankfort, where Bruno lodged, had remarked that Bruno was a man without religion. Then came, also after the manner of this tribunal, a long series of examinations of the prisoner, designed to build up a case against him; examinations so frequent, so protracted, so searching, that, even if torture were not employed, the prisoner's nerves generally gave out, and his resistance to his prosecutors broke down. The materials for proving guilt were, so to speak, slowly squeezed out of the accused.

On the 29th May 1592 Bruno is brought before the court and is examined. In the official note of the proceedings his appearance is thus described: ² "a certain man of medium stature with a chestnut beard, and in appearance of the age of about forty years." He is questioned minutely as to his life and as to the circumstances in which he came to Venice.

On the same day a fresh denunciation against him by Mocenigo is lodged; he deposes to further heresies to which Bruno has given utterance; it looks as if he were being pushed on by someone in the background.³

On the following day (30 May 1592) Bruno is further examined. He tells his life in more detail and states where he had been and what books he had written. He admits that in some of his works he has

¹ Berti, p. 329.

² *Ibid.*, p. 339.

³ *Ibid.*, p. 342.

spoken and discoursed "too philosophically and disingenuously, and not enough as a good Christian would."¹ Shortly afterwards (2 June 1592) comes a further searching cross-examination as to his books and doctrines, of which the Inquisitors now know more. He is pressed hard and has to make grave admissions.² But "I have neither spoken nor written those things *ex professo* nor for the purpose of directly impugning the Catholic faith, but basing my arguments solely on philosophic reasoning or reciting the opinions of heretics."³

The same day he is also examined in prison—which was a usual practice—as to the incarnation, transubstantiation, transmigration. He admits that he had spoken with levity of certain moral offences.

3 June 1592. Again a further examination as to many points of doctrine, as to his living in heretical countries and consorting with heretics, as to his opinions respecting the creation of the world, as to praising Queen Elizabeth and other heretic princes. He admits much against himself. "I have praised many heretics, and also heretic princes, but I have not praised them as heretics, but solely for the moral virtues they possess, nor have I ever praised them as religious and pious persons."⁴

4 June 1592. The tribunal, which probably so far had little knowledge of his writings, has now got a copy of his book, *de Sigillis Hermetis et Ptolomei*.⁵

23 June 1592. His examination is briefly interrupted to call Morosini, the historian, who states that he had never heard Bruno say anything contrary to faith. Ciotto is also recalled, and speaks to the same effect.

I will not go through all the examinations, so many and so protracted as to crush or depress the most buoyant spirit. I pass to the final examination (30 July 1592). The demeanour of the accused, hitherto

¹ Berti, p. 349.

² *Ibid.*, pp. 257–9.

³ *Ibid.*, p. 357.

⁴ *Ibid.*, p. 373.

⁵ *Ibid.*, p. 378.

bold, almost aggressive, has changed. Whether it is that he now recognizes his peril, or that he has been broken down by the horrors of imprisonment or the repeated examinations, he no longer speaks with confidence. He confesses his faults. "I acknowledge that I have given no small occasion for suspicion of heresy, yet even so I assert that it is the truth that I have always been conscience-stricken and intended to reform."¹ He humbly begs pardon for his many offences. The official account is as follows :

"Humbly beseeching pardon from the Lord God and Your Most Illustrious Lordships for all the sins I have committed, I am here ready to perform whatever shall be decided by your wisdom and shall be adjudged expedient for my soul."²

"And furthermore I pray that you will give me a punishment severe to excess, if so be I might avoid a public exhibition which might bring disgrace on the sacred habit of the Order which I have worn; and if by the mercy of God and Your Most Illustrious Lordships my life shall be spared, I vow so notably to reform my life that the edification of my new estate may purge the scandal which I have occasioned."³

It has been urged in excuse for this abasement and abandonment of principles that he had never worked them out systematically, that he was so accustomed to deal in symbols that he could with consistency entertain opposing doctrines.⁴

Need we seek for excuse for abandonment or concealment of convictions? Shall we blame him greatly if, aware what might befall him, he first equivocates and then yields, even as Savonarola had for a time done? It was not the least evil of this system that it encouraged duplicity or economy as to truth. There was a whole science of equivocation and subter-

¹ Berti, p. 382. ² *Ibid.*, p. 384. ³ *Ibid.*, pp. 384-5.

⁴ Chr. Sigwart, *Kleine Schriften*, 1. 106.

fuge. The investigator in any region, if prudent, must speak guardedly; he must state as a hypothesis what he believed to be a fact; he must have two measures of truth; and he must try to persuade his vigilant censors that he had one set of beliefs as a philosopher and another as a theologian. The words which I have quoted were Bruno's last authentic words.¹ What is known of him afterwards is only indirect and unofficial. For a time there was silence; the court stopped its deliberations, for what reason is unknown. It is possible that his petition for pardon would have been granted on the terms which he suggested but for the intervention of the Roman Court. On the 17th September 1592 was sent a request by the Sacred Congregation at Rome, asking for him to be sent to Ancona, thence to be conveyed to Rome, there to be dealt with. On the 28th of September the matter is put before the Venetian Senate. It was in no hurry to comply with this request, which touched one of the prerogatives of the State.

There was much correspondence on the subject, the Papal Nuncio urging the point that Bruno was not a subject of the Republic and that he was already in contumacy with respect to two suits instituted against him in Naples and Rome. "The Nuncio replied that he was a Neapolitan and not a subject of this state; and that he was first prosecuted at Naples and then at Rome for the aforesaid grievances." And here I come to a mystery which Bruno's many biographers have not noticed, far less explained. Sarpi, the famous champion of the Republic against the Papacy, wrote a book on the history of the Inquisition in Venice, and one point which he urges with force is that the Inquisition was wholly independent of the Roman Court and derived its authority from the Republic. In that volume he also discusses the question of extradition, and, while admitting that

¹ Berti, p. 264.

the general rule is that an offender shall be handed over to be tried where his offence was committed, he contends that there is an exception as to heresy, "because the heretic sins against God, who is everywhere; and again, because so long as he clings to his error he sins everywhere he goes: and so, wherever he is punished, he may be said to suffer in the place where he has offended."¹ Why the Republic did not insist upon this I cannot say.

In the end the Republic agreed to surrender him. He was delivered over to the Papal officials. From that time he disappears from view. We know little more than that he remained in prison from the 27th February 1593 to 1599. What happened in these six years, why there was this long delay, no one can now tell—no one will ever tell—the records appear to have been lost or destroyed. Was he forgotten? Did the Pope long hesitate as to his fate? Was he treated with exceptional favour as a Dominican? Was he subjected to fresh interrogation? Did he cast aside all subterfuges and avow his true opinions? Was he tortured? We cannot say. It is a great mystery.² He vanished in darkness. He emerges only to go to the stake. We do not even know with certainty the grounds of his condemnation by the Roman Court. All that we know is to be gathered from an account, imperfect and inaccurate in some respects, by Scioppius, a German scholar who happened to be in Rome in 1600, the year of the jubilee of Clement VIII. I translate his account, so far as it relates to the incidents at Rome. "There he was interrogated several times by the Holy Office and convicted (*convictus*) by the chief theologians. At one time he obtained forty days in which to consider his position (*quibus deliberaret*); by and by he promised to recant; then he renewed his follies (*nugas*); then he got forty other days for deliberation. But he did

¹ Sarpi, p. 76; Matthæus, *de Criminibus*, ch. ii. sect. 8.

² Berti, pp. 275-9.

nothing except to baffle the Pope and the Inquisition. After having been about two years in the custody of the Inquisitor, he was taken on February 9 to the palace of the Grand Inquisitor. In the presence of illustrious cardinals of the Holy Office (who surpass all others in age, experience, knowledge of affairs and of law and theology), in the presence of the expert Assessors and the Governor of the City, Bruno was brought into the hall of the Inquisition and heard his sentence on bended knees. The sentence narrated his life, his studies, his teaching, the fraternal care which had been taken to induce him to repent and his obstinate refusal; he was then degraded, excommunicated and handed over to the secular power with the request that he should be punished as mercifully as possible and—these were the words by which death by fire was designated—‘without effusion of blood.’ This ceremony over, he answered with threatening air, ‘Perhaps you, my judges, pronounce this sentence against me with greater fear than I receive it.’ The guards of the Governor conducted him to the prison; he was left there eight days to see whether he would repent. But it was no use. So lastly he was taken to the stake. Just as he was dying a crucifix was presented to him, but he pushed it away with fierce scorn. So he was burnt and perished miserably.”¹ One recalls the prophetic words: “I have fought; that is much—Victory is in the hands of fate. Be that as it may with me, this at least future ages will not deny of me—be the victor who may—that I did not fear to die, yielded to none of my fellows in constancy, and preferred a spirited death to a cowardly life.”²

It will be asked, Was he guilty? The answer cannot be given with confidence; we cannot be quite sure of the charges against him. But from the point of view of the lawyers of the time it is probable that he was guilty of heresy and apostasy; guilty of

¹ Berti, p. 400.

² MacIntyre, p. 99.

offences which in those days were capital; guilty in modern language of thinking freely; guilty of not being afraid to go into the light; guilty of seeing more clearly than other men the consequences of the great discoveries which had been made in his age, and pressing with ardour upon his contemporaries, especially as to the plurality of worlds, those consequences which later generations found embarrassing.¹

But the truth is borne in upon the legal historian that considerations of guilt or justice are here somewhat beside the question. Those concerned had other things in view. One does not think or talk of guilt or justice when one is staying a plague or pestilence, or arresting a devastating flood. One does what is effectual. And in the times of which I speak there was, men thought, the deadliest of pestilences and plagues to be stayed, the most destructive of floods, overturning all settled order, to be arrested. The fact is that the word "trial," by which, or its equivalent, we now describe legal proceedings, is somewhat modern and misleading. It imports unprejudiced search, hearing of both sides, balancing of conflicting evidence and a final decision based thereon. There was a great advance, and it was a late one, when, order being safe, men could afford to think of justice. It has been urged that it was the merit of Roman law to make that advance:

"While Roman law, and, following it, the canons of the Church, proclaimed this great and salutary principle, that whoever has not avowed his crime or has not been convicted of it by obvious and irrefutable proofs is to be considered innocent, Germanic customs arose from the opposite principle. It is the accused in this barbarous law who has to prove his innocence,"

by purgation or otherwise.²

In some of the oldest words describing legal procedure is embedded, if I mistake not, a wholly

¹ J. Ward, *The Realm of Ends*, p. 181. ² Fournier, p. 263.

different conception. What seems to us of the essence of legal procedure is either absent or seems a mere accident. We come to a time when the main business of courts is to begin very near the point where they now end; not the examination of the truth of a controversy submitted to it, but the pronouncement of an opinion, the assertion of power, the exercise of an administrative act. Professor Thayer, in his book on Evidence, has pointed out that the word "trial" in the sense in which it is used with us is comparatively modern; and undoubtedly many of the older expressions descriptive of legal procedure are suggestive of enunciation of a predetermined result rather than of an inquiry.

"As applied to the old law this word (trial) is an anachronism. The old phrases were *probatio*, *purgatio*, *defensio*; seldom, if ever, in the earlier period, *triatio*. In those days people 'tried' their own issues; and even after the jury came in, e.g. in the early part of the thirteenth century, one is sometimes said to clear himself (*purgare se*) by a jury; just as a man used to be said in our colonies to 'clear himself' and 'acquit himself' by his own oath, as against some accusations and testimony of an Indian."¹

I make one qualification. Some of the very oldest forms of procedure are permeated by a higher sense of justice. In the laws of Manu there is a chapter (ch. viii) devoted to judicature and the judicial duties of rulers. Nothing can be better or wiser than some of the maxims, the spirit of which is expressed in such words as these:

"The only firm friend, who follows men even after death, is justice: all others are extinct with the body."² "Where justice is destroyed by iniquity, and truth by false evidence, the judges who basely

¹ J. B. Thayer, *A Preliminary Treatise on Evidence at the Common Law*, p. 16 n.

² Sir William Jones's translation, ch. viii. 17.

look on without giving redress shall also be destroyed." ¹ "Justice, being destroyed, will destroy; being preserved, will preserve; it must never, therefore, be violated. 'Beware, O Judge, lest justice, being overturned, overturn both us and thyself.'" ² "As a hunter traces the lair of a wounded beast by the drops of blood, thus let a king investigate the true point of justice by deliberate argument." ³

But such conceptions of the functions of a court were in early times rare. Justice is a plant of slow growth.

It may seem strange that I should liken the ways and dealings of courts in primitive times to those of a court sitting in the centre of civilization composed of men of culture, at its head an enlightened Pope, and upon it one of the greatest scholars of his age, or indeed of any age, Cardinal Bellarmine. But—and it is one of the chief lessons to be derived from these studies—fear brings back the primitive conception of the functions of courts; not necessarily, or indeed often, personal fear, but fear of changes; fear on the part of the upholders of the old order; fear of the effects of the discoveries of new truths; fear of emerging into the full light. Where such fear is justice cannot be; a court becomes an instrument of power; judges are soldiers putting down rebellion; a so-called trial is a punitive expedition or a ceremonial execution—its victim a Bruno, a Galileo, or a Dreyfus.

¹ Sir William Jones's translation, ch. viii p. 14.

² *Ibid.*, p. 15.

³ *Ibid.*, p. 44.

V. GALILEO

I COME next to two trials which could not well be passed over even if they had no interest to the lawyer. They belong to the large group of trials of thinkers, explorers, discoverers, men of science, and, as such, they have interest other than legal interest; they are typical examples of this class. I refer to a number of trials which occurred in the sixteenth, or early in the seventeenth, century. Their scenes are Italy and Switzerland; they include the trials of Galileo, Vanini, Campanella, Bruno, Servetus. They are important incidents in the struggle then going on between the old order and the new. Tempting though the many side issues connected with these trials are, I shall do as I have before done: I shall deal with them solely as incidents in legal history.

I have taken two trials, that of Galileo and that of Servetus. They were not exceptional. If you had travelled at the end of the sixteenth century or the beginning of the seventeenth from one country in Europe to another, wherever you went you would have found similar prosecutions on foot, similar attempts by courts secular or ecclesiastical to put down obnoxious novelties, and you would have found similar methods in use. And quite apart from outbursts of local fanaticism this was natural. Everywhere prevailed the doctrine *curus regio eius religio*—the subject must be of the faith of his ruler. This was tempered in Germany by the *ius emigrationis*. The subject must quit if he does not conform. Such was the common law of Europe, enforced under the name of proceedings for high treason or heresy, but with the same results. *Ure et seca* was the policy to

be applied. The offenders might be scholars or inquirers with no desire except to seek the truth, they might be treated as poisoners or as thugs.

In Scotland there were trials for blasphemy not unlike those which the Inquisition directed. Torture, which the law of Scotland recognized, was freely used, and in a terrible form. In Pitcairn's wonderful collection of trials frequent mention is made of this hideous practice. Almost at the same time as Galileo's trial James Ogilvie was being tried for high treason; and it is remarked that :

" in the tryal of some criminal persons, it was found that nothing helped so much to find out the trueth of faults wherewith they were charged, than withholding of their naturall rest; it was aduised, that he should be kept without sleepe for some nights, which was accordingly done " :

the result being delirium.¹

In England there were at this time similar trials, disguised, it might be, under the name of high treason, and in the Star Chamber and Privy Council torture was employed, if not in pursuance of the Common Law, in pursuance of the royal prerogative.² Had you gone to France you would have found the same hideous devices in use, the various Parliaments, or high courts, actually competing with each other in the discovery of more effectual modes of torturing the human frame; modes which I cannot portray, but which are described in the histories of criminal law and the instruments of which are still preserved.

There was a period of about 250 years—I cannot state it in exact figures—in which all that was evil and cruel in criminal law became prominent and perfected. I may call it the black belt of criminal

¹ R. Pitcairn, *Criminal Trials in Scotland, 1488-1624*, iii, 337.

² D. Jardine, *A Reading on the Use of Torture in the Criminal Law of England*.

law, when torture in many forms was remorselessly employed; when charges of witchcraft and the like were used to cover or palliate atrocities; when there was no pity for age or sex. If there were formed a collection or museum of the appliances of criminal law, its methods and punishments, it would be a strange and varied and grim spectacle. But it would, I think, appear that ingenuity was most active, cruelty most refined and triumphant, about the time with which we are concerned. At this period more than at any other the dark places of the earth were habitations of cruelty, and evil passions found an outlet in forms of justice.

I begin with the trial or trials of Galileo. Only recently could the true story be told. All sorts of legends about it had sprung up and were repeated in works by writers of authority. The documents were incomplete, and there was uncertainty as to the genuineness of some of them. A story discreditable to his prosecutors was made worse by fabrications. It was alleged that he had been tortured. There is no proof that he was; the strong probability is that he was not. Words which he never uttered were put into his mouth. We have all heard—probably most of us have quoted—his saying with respect to the motion of the earth—*E pur si muove*. He never said anything of the kind. It is the last thing which he would have thought of saying. It was said for him more than a hundred and fifty years after his death.

Only gradually and slowly has the truth been brought to light. Documents have been obtained piecemeal. The main authority is a manuscript volume of the proceedings in the Vatican Library (1181 Ex Archivio S. Offij; contr. Galileum Galilei Mathematicum). This manuscript has had a curious history. It was carried to Paris at the time of the French occupation of Rome in 1811. Napoleon ordered it to be published in full. But this was

never done. On the fall of the first Empire it was claimed by the Papal Government. It was missing; it had disappeared from the National Library in Paris. Finally, it was found in the French king's private library. In 1846 it was given up by Louis Philippe, and was presented to the Pope by Rossi. A condition of the surrender was that the entire proceedings should be published. This was not done. Marini, it is true, published certain extracts. But they were selected with a purpose and with a design, viz. to shield the Holy Office from odium. Some further documents were published subsequently by Berti. It is probable that all which is material is now published. For a time there was much doubt as to the genuineness of one important document to which I shall advert. But this doubt has been removed. Favaro, who has published a collection of all the extant documents, states ¹ that the discussions as to the authenticity of the documents are at an end:

"To-day we are of opinion that there is no longer anyone who honestly suspects that the documents have been purposely altered in any way; and in particular the publication of the *Decreta* in full has conduced to that result, for they show from first to last a perfect correspondence between the two series of records which deal with the subject. . . . Thus the story of Galileo's condemnation may be written at last in all its completeness; there is really no need of rhetoric or invective to bring to light its true significance; for, setting aside all quibbles about the authority which pronounced it, the sentence was, if not the greatest, at least one of the most serious mistakes which the Roman Curia has made, though that body expiated it—perhaps not yet in full—on the day when it had to expunge the condemned dialogue from the Index, and inscribe in the very

¹ A. Favaro, *Galileo e l'Inquisizione*, p. 8.

volumes of the *Decreta* permission to teach, uphold and defend that doctrine which it had already declared to be absurd, philosophically false and formally heretical." ¹

I revert briefly to a point upon which I touched in describing Bruno's trial. I recall the state of belief as to the discoveries and teaching of Copernicus respecting the solar system, the accepted theories in 1613, the date with which we are concerned. Copernicus had died in 1543. His book *De Revolutionibus Orbium Caelestium* had been published in 1543 immediately after his death, and the preface, written by a false and timid friend, stated the new doctrine as a mere hypothesis which he no doubt believed to be true. It did not gain acceptance in the Universities. Luther speaks of "this fool Copernicus" who "wants to overturn the whole science of astronomy." At the beginning of the seventeenth century to speak of it as a hypothesis was not deemed by the authorities heretical and criminal, to teach it openly was perilous. It had become more and more difficult to maintain this position. The facts revealed by Galileo's telescope were palpably inconsistent with the Ptolemaic system. He had verified the Copernican doctrine by his striking discoveries; his telescope had revealed new worlds. He did what so many then did—he equivocated; if he did not equivocate he spoke with reservation more or less guarded. It was a time of terror to all who thought freely; it was, therefore, a time of subterfuges. The choice might be between death, silence, recantation or equivocation. The last in some of its many forms was so much the easiest. Tyranny was met by cunning, intolerance by deception. True, some of the innovators had their holes in which to hide from their pursuers. Sometimes they found refuge with a prince who sheltered them until the chase was given over. More often their only refuge was in some system of subtle

¹ A. Favaro, *Galileo e l'Inquisizione*, p. 9.

reservations or in a double set of incompatible beliefs or in irony perceptible only to the initiated.

Not by constitution a fighter, too much interested in his investigations to seek to end them by martyrdom, Galileo was in no hurry to do battle with the Church. He knew the powers of the Inquisition. Unfortunately he had made a slip; he stumbled into candour. He wrote a letter in December 1613 which revealed his real belief as to the Copernican system.

In 1611 he had visited Rome of his own accord. Though his adoption of the Copernican system was known, though he had taught it in his *Sidereus Nuncius*, though his discoveries of Jupiter's moons and Saturn's ring had strengthened the proofs of that doctrine and he had already incurred the dislike of those who taught or accepted the Ptolemaic system of astronomy, he was received by the Pope and Cardinals with courtesy. His visit was rather a triumph than an incident in a prosecution. He himself was deferential and submissive. He was granted an audience by Pope Paul V, who received him kindly. He conversed with Bellarmine, then in a position of great power, and Bellarmine raised no objection. But, quite unknown to him, his enemies were at work. In that very year was going on a prosecution against one Cremonini, and in the proceedings of the Holy Congregation under date of 17 May 1611, is the entry: "Let it be seen whether Galileo, Professor of Philosophy and Mathematics, should be named in the process against doctor Cæsar Cremonini."¹ Very soon after was lodged an accusation or denunciation of Galileo. He had unwittingly given his enemies an opening. In February 1615 Fra Nicolo Lorini, a Dominican of Florence, transmitted a writing by Galileo—a letter to Benedetto Castelli—which, maintaining the Copernican doctrine that the earth moves, "contains," said the denunciation,

¹ K. von Gebler, *Galileo and the Roman Curia* (tr. Sturge), p. 36.

"many suspect or rash propositions."¹ The denunciation enclosed a copy of a letter from Galileo to his devoted friend and pupil, Castelli, a letter upon which much turned. It was written in consequence of a talk at the table of the Grand Duke of Tuscany at Pisa about Galileo's discoveries. Castelli had upheld the Copernican view. He had left the Palace, but was called back, and when he returned he found the Grand Duke's mother attacking the Copernican doctrine as unscriptural. Castelli told Galileo of this incident. The result was a letter, laying it down that the Bible and Nature are both compatible with the Copernican system. This letter, written² the 21st December 1613, was intended to remove doubts raised by the Archduchess Magdalena of Austria, wife of Cosmo Medici. He stated that the decrees of Scripture cannot err, but its interpreters and expositors may, especially when they adhere to the literal truth, which would lead to contradictions :

"Thus many statements are to be found in the Scriptures, some of which appear according to the literal meaning of the words to diverge from the truth, but are dressed up in such a way in order to adjust them to the ignorance of the crowd."

He quotes the saying of Cardinal Baronius : "The Holy Spirit intended to teach us how to go to heaven, and not how the heavens go." He proceeded to say :

"if theology occupies herself solely with the highest problems, maintains her throne by reason of the supreme authority conferred upon her, and does not condescend to the lower sciences as not affecting salvation, the professors of theology should not assume authority on subjects which they have not studied. For this is just as if an absolute ruler should

¹ D. Berti, *Il Processo Originale di Galileo Galilei*, p. 16.

² *Ibid.*, p. 18.

demand, without being a physician or an architect, that people should treat themselves, or erect buildings, according to his directions, to the great peril of poor sick people and obvious ruin of the edifice."

True, "It is," he says,

"the part of wise interpreters of Holy Scripture to take the pains to find out the real meaning of its statements, in accordance with the conclusions regarding nature which are quite certain, either from the clear evidence of sense or from necessary demonstration. As, therefore, the Bible, although dictated by the Holy Spirit, admits, from the reasons given above, in many passages of an interpretation other than the literal one; and as, moreover, we cannot maintain with certainty that all interpreters are inspired by God, I think it would be the part of wisdom not to allow anyone to apply passages of Scripture in such a way as to force them to support, as true, conclusions concerning nature the contrary of which may afterwards be revealed by the evidence of our senses or by necessary demonstration;"

a courteous, temperate, conciliatory letter, which declares the writer's willingness to sign an opinion of wise and well-informed theologians as to the Copernican theory, but which concludes with the significant remark, "it is not in the power of any human being to make (statements) true or false, or other than they *de facto* are."¹

Meantime, unknown to Galileo and his friends, the Inquisition was secretly at work. It was deemed necessary to do what hitherto had not been thought essential—to define the position of the Papacy towards the Copernican system, which hitherto had been regarded with suspicion but never formally condemned.

26 February 1615. Order by Cardinal Mellini,

¹ Gebler, p. 70.

President of the Holy Congregation, to its Secretary, to procure "in a skilful manner" the original letter. There was some difficulty in getting it; but Galileo, conscious of his innocence, supplied a correct copy. Then came the first formal step in the proceedings. 19 March 1615—order for the examination of Father Caccini of Florence, who was said to be specially acquainted with the errors of Galileo.¹

20 March 1615. Examination of Father Caccini. He repeated the contents of a sermon which he had preached on the passages, "That the sun be not moved." "Ye men of Galilee, why stand ye gazing up into heaven?" He added certain new charges; Galileo maintained that "God is not a self-existing being, but an accident; God is sentient because the Divine sentiments reside in Him; the miracles said to be performed by the saints are not real miracles."²

There was much delay, partly owing to the examination of two witnesses, Father Ximenes, a Dominican, and a young nobleman, Attavanti, who, however, could tell little, it was found.

The Inquisition decided to do nothing as to Caccini's accusation. But they turned to an examination of the Copernican doctrine.³ For more than three-quarters of a century it had been before the world, but no opinion had been expressed as to it. But on the 23rd of February the decisive step was taken. The Assessors who had been appointed to examine the matter declared heretical these two propositions:

1. The sun is the centre of the world, and immovable from its place;
2. The earth is not the centre of the world and is not immovable, but moves, and also with a diurnal motion.

The first proposition, they said, was "too ridiculous and absurd in philosophy, and formally heretical." The

¹ Berti, p. 28.

² F. H. Reusch, *Der Process Galilei und die Jesuiten*, p. 108.

³ Gehler, p. 20. ⁴ Gehler, p. 70.

second, they were pleased to say, was equally censurable in a philosophical point of view, and "as regards theological truth, but less erroneous in faith."

Rumours having reached Galileo of what was going on, he went to Rome, not in consequence of a citation. As he himself said, "In the year 1616 I came to Rome of my own accord, without being summoned."¹

When he arrived, he was informed of the censure which had been passed upon the Copernican doctrine.

On the 25th February 1616, Cardinal Bellarmine, who was his friend, was to call Galileo before him and to admonish him not to treat in any way of the immobility of the sun or the motion of the earth, "if indeed he would not submit, he would be imprisoned."²

Accordingly, next day (26 February 1616) Cardinal Bellarmine called Galileo before him. The official note of the interview states that Galileo was commanded and enjoined "to relinquish altogether the said opinion that the sun is the centre of the world and immovable, and that the earth moves; nor henceforth to hold, teach, or defend it in any way whatsoever, verbally or in writing; otherwise proceedings would be taken against him in the Holy Office."³

26 February 1616. Cardinal Bellarmine reports Galileo's promise to obey. "The tenor of which is that he would altogether abandon the said opinion, nor, moreover, would he in any way hold, teach, or defend it; otherwise let there be process against him in the Holy Office."⁴ It was a dramatic meeting, significant and memorable; one can think of few in history more so; the meeting of the old and the new, and at a crisis of both. No better representatives could have been found of both—Galileo, the bold investigator, pursuing scientific methods to

¹ Gebler, p. 71.

² Berti, pp. 9, 52; Gebler, p. 77.

³ *Ibid.*, p. 78. ⁴ Berti, p. 9.

their last consequences, the forerunner of modern science and its methods; Bellarmine, a great figure, how great it is not easy for us now to conceive; scholar, jurist, controversialist, "the most powerful controversialist in defence of Popery that the Romish Church ever produced";¹ a great arresting force; the most formidable fighter in the war then waging in Europe between the secular and ecclesiastical powers. To grope among the many controversies in which he took part is very much like driving the plough through an old-world battle-field. The ploughshare turns up antiquated weapons and the remains of men of common stature, but it also lays bare the bones of a giant. For such he was, and it was a giant's work which he did. In his several treatises, notably that respecting the Papal power in temporal matters, he erected the strongest fortress against the secular power; a fortress which successive generations of publicists and theologians sought to breach. If Ilum was to be saved, it was by his right hand. That richly gifted nature was a strange compound of gentleness and remorselessness, of severity to himself as well as to others. His autobiography is a story of humility and integrity. He who would not kill gnats or vermin, though preying on him, because, as he said, this earth was their paradise as they had no other, was likewise the author of the maxim *Mors hereticorum pax ecclesiæ*, and taught that everything was permitted to the subjects of excommunicated princes.

In all probability it was a friendly meeting; at all events, before Galileo left Rome he got from Bellarmine the remarkable certificate (26 May 1616) in which the Cardinal, denying the truth of calumnious reports, says that :

"Signor Galileo has not abjured, either in our hand nor the hand of any other person here in Rome,

¹ R. F. R. Bellarmino (Card.), *The Notes of the Church*, etc. (1839), p. vii.

or anywhere else, so far as we know, any opinion or doctrine held by him, neither has any salutary penance been imposed upon him; but only the declaration made by the Holy Father and published by the Sacred Congregation of the Index has been intimated to him, wherein it is set forth that the doctrine attributed to Copernicus, that the earth moves round the sun, and that the sun is stationary in the centre of the world, and does not move from east to west, is contrary to the Holy Scriptures, and therefore cannot be defended or held.”¹

I have enumerated the chief steps in the first trial, which concluded (5 March 1616) with the Decree of the Holy Congregation putting in the Index certain books, and condemning the false doctrine of Copernicus—an opinion *in perniciem Catholicæ veritatis*.

It is usual to speak of Galileo's first trial. But the proceedings scarcely amounted to that. There was a denunciation. But Galileo was not formally cited. He was not examined. Nor was he condemned to any punishment. He was merely admonished. If the proceedings had ended there, little would have been heard of the first trial.

I come to the second trial. I am inclined to think that it would not have taken place had Bellarmine been still alive. Some sixteen years had passed; Galileo had continued his investigations; the proofs of the Copernican system had accumulated; he was in high esteem, though he had enemies whose power he underrated. His fame had grown; he published no works openly defending the Copernican doctrine, though in letters to his scientific friends he maintained or assumed it. Perhaps he was not very clear as to the exact scope of the injunction laid upon him or the nature of his promise. He may have hoped much from the new Pope Urban VIII, a lover of learning; one of a very different disposition from his

¹ Gebler, p. 88.

predecessors, Paul V and Gregory XV. At all events he gave to his enemies an opening which they were quick to use.

In 1632 he published his *Dialogues on the Two Principal Systems of the World, the Ptolemaic and the Copernican*, a work in which two of the interlocutors defended by scientific reasoning the double movement of the earth, while the third interlocutor, named, perhaps with some significance, "Simplicius," supports, with feeble reasoning, the opinions of the Aristotelian school. The pretence or semblance of impartiality deceived no one. In his preface to the *Dialogue* he states that he is "proceeding by pure mathematical hypothesis, seeking by every method known to art to represent its superiority, not of course in an absolute sense, to the theory of the immovability of the earth, etc." ¹ He adds with irony :

"I hope these considerations will prove to the world that, if other nations have been greater navigators, we have not been behindhand in speculation ; and that if we fall back on the assertion that the earth is stationary, taking the opposite view merely by way of mathematical caprice, that does not arise from a disregard of the many others who have given their attention to the subject, but, if for no other cause, by reason of the powerful support which is lent to it by piety, religion, and a consciousness of the weakness of the human mind." ²

For the printing of the *Dialogues* at Florence Galileo had experienced difficulty in getting a licence. But the *imprimatur* had at last been granted, and the book met with great approval, when there suddenly burst upon its author a storm more violent than that from which he had escaped. First the sale of the book was stopped by orders.³ Then was appointed a commission of theologians and men of

¹ Berti, p. 69. ² *Ibid.*, p. 70. ³ Gebler, p. 166.

science to examine it. In one month the commission made a report highly unfavourable to Galileo. It found :

" (1) That without orders and without making any communication about it he put the *imprimatur* of Rome upon the title-page.

" (2) That he had printed the preface in different type, and rendered it useless by its separation from the rest of the work ; further, that he had put the saving clause at the end in the mouth of a simpleton, and in a place where it is hard to find ; that it is but coolly received by the other interlocutor, so that it is only cursorily touched upon and not fully discussed.

" (3) That he had very often in the work deviated from the hypothesis, either by absolutely asserting that the earth moves and that the sun is stationary, or by representing the arguments upon which these views rest as convincing and necessarily true, or by making the contrary appear impossible.

" (4) That he had treated the subject as undecided and as if he were waiting for, though he does not expect, explanation." ¹

The report further found that he had broken the injunction laid upon him in 1616. The fact was he had fooled the Holy Congregation ; fooled a Pope who did not stand opposition ; subjected to ridicule the Papal decree.

Such a crime according to inquisitorial usage demanded severe punishment.²

From that point things moved fast.

23 September 1632. Order from the Pope for Galileo to appear before the Commissary-General.

9 December 1632. Peremptory order to that effect.

30 December 1632. Further order ; the Inquisition is no longer to tolerate the "subterfuges"

¹ Gebler, p. 173.

² *Ibid.*, p. 174.

put forward for non-appearance; Galileo is to be sent to Rome, "imprisoned, and put in irons."¹

Galileo long temporized. He pleaded his weakness. He spoke of his great age, his feeble health, his blindness, his contrition, his piety, his submission. His friends urged that, ill as he was, he might die on the road. All to no purpose. The Pope was angry and inflexible; he had been fooled and was inexorable. "He can come very slowly in a litter, but he must be tried here in person. May God forgive him for having been so deluded as to involve himself in these difficulties, from which we had relieved him when we were Cardinal."²

Galileo was overwhelmed with grief and in despair.

"This vexes me so much," he wrote to a friend, "that it makes me curse the time devoted to these studies in which I strove and hoped to deviate somewhat from the beaten track generally pursued by learned men. I not only repent having given the world a portion of my writings, but feel inclined to suppress those still in hand, and to give them to the flames, and thus satisfy the longing desire of my enemies, to whom my ideas are so inconvenient."³

So to Rome he had to go, travelling by litter and reaching it in February 1633. He appeared on the 12th April 1633 before the Inquisition. He was questioned mostly as to his interview with Bellarmine in 1616.⁴ According to him Bellarmine allowed him to treat the Copernican doctrine *ex suppositione*: "It might be held hypothetically and written about in this sense."⁵ He said that he did not understand the agreement, that he had never bound himself not to teach the Copernican doctrine; pressed in cross-examination he admits that he may have been told that he was commanded not to hold or defend the

¹ Berti, p. 79.

² Gebler, p. 183.

³ *Ibid.*, p. 178.

⁴ Berti, p. 85.

⁵ Gebler, p. 203.

doctrine. "It may be that 'and *not to teach*' was also there. I do not remember it, neither the definition 'in any way whatsoever' (*quovis modo*)."¹ So far he was not treated harshly; large comfortable apartments were put at his disposal for himself and his servants;² he was a prisoner only in name.

On the 30th April 1633 was the second examination, and with it came an astounding change. At the first hearing he had denied that he had maintained the Copernican doctrine or broken any command or promises. He now admitted his error; he owned that there is some taint of disobedience in his writings. "My error, then, has been—and I confess it—one of vainglorious ambition, and of pure ignorance and inadvertence." He went farther in his abject recantation. "In confirmation of my assertion that I have not held and do not hold as true the opinion which has been condemned, of the motion of the earth and the stability of the sun—if there shall be granted to me, as I desire, means and time to make a clearer demonstration thereof, I am ready to do so."³ Which was worse, one asks, the tribunal which burnt Bruno, or that which extorted such a humiliating confession?

10 May 1633. Another hearing. Galileo urges that in the course of fourteen to sixteen years he had forgotten the injunction not to hold or teach in any way the obnoxious opinion. He urged too in mitigation his advanced age and pitiable bodily indisposition.

Still the Congregation was not satisfied. It was part of the jurisprudence which it administered not to be content with merely verbal confessions; it would pry into the most secret recesses of the conscience in order to detect the true belief.

On the 16th June 1633 the Holy Congregation decreed:

¹ Gebler, pp. 204-5.

² *Ibid.*, p. 209.

³ *Ibid.*, p. 215.

" the same Galileo to be questioned as to his intention, and under threat of torture, and if he persists he is to be called upon to recant in full meeting of the Holy Office, condemned to prison at the will of the Holy Congregation, and ordered also that no more by writing or speech shall he discuss in any way whatsoever the movement of the earth nor the fixedness of the sun, nor the contrary opinion, on pain of being treated as having relapsed." ¹

21 June 1633—further examination and again an abject confession: " I do not hold, and have not held, this opinion of Copernicus since the command was intimated to me that I must abandon it; for the rest, I am here in your hands, do with me what you please." The report here says, " Being told that he should tell the truth, otherwise he would be brought to the torture ": the broken old man could but say, " I am here to obey, and I have not held this opinion since the decision was pronounced, as I have stated." ² He must drink the dregs of the cup of humiliation.

22 June 1633. In the Dominican Convent of St. Maria sopra la Minerva, his sentence and recantation; sentence that the publication of the *Dialogues* be prohibited, and that Galileo be condemned to the formal prison of the Holy Office during pleasure. The last step of all was his formal recantation. It was abject and unqualified. Having admitted that he had broken the injunction of the Holy Office as to holding and teaching the Copernican doctrines, and that he is justly suspected, he proceeds: " With sincere heart and unfeigned faith I abjure, curse and detest the aforesaid errors and heresies, and generally every other error and sect whatsoever contrary to the said Holy Church; and I swear that in future I will never again say or assert, verbally or in writing, anything that might furnish occasion for a similar

¹ Gebler, p. 223 n.

² *Ibid.*, p. 227.

suspicion regarding me." ¹ There was no physical torture, there was no dungeon, but no humiliation was spared him.

And here I may advert to facts and circumstances apt to be forgotten, but necessary for the understanding of the truth; facts which make me think that the second prosecution would not have been instituted a few years earlier or a few years later.

I have mentioned that in the course of the proceedings certain books were prohibited, while others were forbidden *donec corrigantur*; some placed in the *Index Prohibitorius*, others in the *Index Expurgatorius*. At the time of which I speak some such practice as this had become well-nigh universal on the part of the State as well as of the Church; the State did what the Church did, though not so systematically.

It is true that the practice of prohibition in a rudimentary form goes much farther back than the sixteenth or seventeenth century. The claim to exercise jurisdiction over literature, to give it the Church or State hall-mark, is an old claim. You may read of it in Milton's speech for unlicensed printing. Various Councils forbade the publication of certain books; e.g. the Council of Nicæa (325).² The invention of printing made the matter more important.

Church and State alike were active and vigilant in guarding against abuses and perils connected therewith. During the sixteenth century all over Europe the exercise of this censorship became common. The right was claimed by all public ecclesiastical bodies, including the Universities. It was claimed even by individual superior ecclesiastics and by the supreme civil magistrate.³ Wolsey in 1520 issued a prohibition of the works of Luther; so did Henry VIII;⁴

¹ Gebler, p. 243.

² F. H. Reusch, *Der Index der verbotenen Bücher*, i. 9.

³ J. Mendham, *The Literary Policy of the Church of Rome*, etc., p. 13.

⁴ *Ibid.*, p. 20.

so did Mary. Henry VIII issued orders forbidding the printing of certain books. The ordinance of 1529 enumerated eighty-five. It was the same year in which Charles V¹ issued a similar prohibition. At first these indices were prepared mechanically and unintelligently; the compilers copied from the Louvain and Spanish Index.² A little before the time with which we are concerned the matter had been systematically dealt with. An Index *auctorum et librorum* was published in 1559 under Paul IV. Next comes one prepared by a commission in 1562-3 and published in 1564 by Pius IV; another in 1590 under Sixtus V; another in 1596 under Clement VIII. About this time too were prepared ten rules for the guidance of the Congregation, rules laid down in the Bull of the 24th March 1564. I quote one of these rules:

“Rule IX. All writings about geomancy, hydromancy, aeromancy, pyromancy, oniromancy, cheiromancy and necromancy; or which treat of sacrileges, sorceries, poisons, auguries, or magical incantations are utterly rejected. The bishops shall also diligently guard against any persons reading or keeping any books, treatises or indexes which treat of judicial astrology or contain presumptuous predictions of future events, or contingencies, and fortuitous occurrences, or of those actions which depend upon the will of man.”³

But such operations and observations of natural things as are written on and of navigation, agriculture and medicine are permitted.

I cannot but think that had the matter arisen a few years earlier or a few years later the condemnation of the Copernican system would not have found its way into the Index. To be fair to its authors,

¹ Reusch, p. 87.

² *Ibid.*, p. 6.

³ *Ibid.*, p. 338.

they rarely threw themselves right across the path of physical science. It was doctrine and words which they sought to control. But once the condemnation was pronounced it was persisted in. To-day this practice survives only in the case of the drama. The Censor of plays is the direct and only descendant of the authors of the Index and of the licensing authority of the Star Chamber.

VI. SERVETUS

I COME to the history of a trial somewhat similar to that of Bruno, though the prosecutors were very different; a trial nominally for heresy but also due to other causes; a trial the scene of which is not Rome but Geneva; the Court which condemned the accused not the Inquisition, but one composed of its enemies; a trial often examined as an incident in the history of thought, but with peculiarities of interest to the jurist; a trial, it may be, not without its instruction for the present. Like Bruno, Vanini, Campanella, and so many of the more daring innovators, Servetus came from the south of Europe, in this case Spain. Servetus had other points of resemblance to Bruno. He, too, was a son of the Renaissance; smitten with the love of novelties; with his face turned towards the future; not gifted with Bruno's poetical or philosophical genius, but a true scientific inquirer, and with a wide range of attainments and varied interests compatible with insight into all of them. Whether his admirers have correctly maintained that he preceded Harvey in discovering the circulation of the blood I do not undertake to say; I leave that to experts. If he busied himself with astrology, he was none the less in advance in many things of his age. Like Bruno he was eager for knowledge, inquisitive, restless, cosmopolitan; somewhat arrogant, self-confident. His was "a fiery, richly-endowed, extravagant nature, with a keen intellect and powerful imagination, ambitious and bold and full of pugnacity." ¹

¹ F. W. Kampschulte, *Johann Calvin, seine Kirche und sein Staat in Genf*, ii. 170.

A born fighter, full of confidence in his own prowess, he saw that the war of Michael and the dragon was at hand; and he, Michael Servetus, was to be the Michael. He battled chiefly with the theologians of his time. But an innovator in all things, especially in medicine, he attacked the doctors also. Both were wrong, and the latter were the pest of the world. Like Bruno, Servetus was a wandering scholar. They were kinsmen of Paracelsus and Cardan and of so many others of that time; never able to settle in one place; fleeing from one country to another; their inward lives reflected in their restless goings to and fro. Born at Vilanova in Aragon in 1509 Servetus had left his native land in circumstances somewhat obscure. He studied law and theology at Toulouse in 1528. It is said that to escape his enemies he changed his name; he called himself Villeneuve. We find him at various places in quick succession. He wandered into Italy, and thence to Germany, Switzerland, and France, to Paris, Orleans, and Lyons. He had no abiding-place. We hear of him as a press corrector at Lyons, where some of the great printers of the time had established themselves. There he edited an edition of Ptolemy's *Geography*. He returned to Paris, where he taught geography, mathematics, and astrology. Profoundly interested in theology, he agreed with no one; he took up a position midway between Protestants and Catholics. While espousing with ardour some of the tenets of the Reformers, he did not stop where they did, but went on to draw conclusions from which they recoiled with horror. To them he was a theological anarchist throwing bombs about. He got into trouble at Basel with Œcolampadius. He wandered to Strasburg and got again into trouble there. He had printed at Hagenau in 1531 *De Trinitatis erroribus Libri VII*, a book which was the beginning of his persecutions. Next we find him at Charlieu, practising as a physician, then at Paris, where

he published an heretical book on judicial astrology. A decree of parliament compelled him to leave, and in 1540 we find him at Vienne in Dauphiné.

Here also he practised as a physician under the name of Villeneuve, and was for a time prosperous and at peace. He had the friendship of the liberal-minded archbishop and might have remained in quiet but for a step which he there took. He secretly printed a work, *Christianismi Restitutio*, 1553 (of which it is said only three copies now exist), in which his opinions were most boldly avowed and defined; an iconoclastic work, full of doctrines abhorred by Reformers and Catholics alike. A copy reached a friend of Calvin, Guillaume de Trie. This man wrote to Vienne complaining that the Catholics allowed such a book to be printed. This was communicated to the Inquisition of the diocese, who took action against Servetus, *alias* Villeneuve, *alias* Reves. A prosecution being instituted by the Vienne Inquisitor, Servetus was arrested on the 4th April 1553. There was a difficulty in obtaining evidence against him. It was essential to bring home to the physician quietly practising at Vienne the authorship of the obnoxious book, a matter not then so easy as it is now. The censorship and risks of authorship made all sorts of subterfuges common on the part of honest men. Books were printed in many secret ways. The title-page of a volume might bear the name "Paris," but it might well be that it was actually printed in Holland. It was not disgraceful to print books under false names. Additions to the text, excisions also were made, if some purpose was to be gained thereby. The hunted author grew cunning. All was fair in war and authorship.

The missing link between the anonymous writer of the *Christianismi Restitutio* and Servetus was supplied by Calvin, and in a way which was a somewhat shabby act on the part of a great man. Fancy a religious teacher doing third-class police or private-

agency work ! But the men hated each other. They had also a fascination for each other. Calvin regarded Servetus as the enemy of light ; and viewed him—"ce vilain chien"—as the most dangerous enemy of all that was good and sacred, worse than all others in using poisonous weapons.¹ It was right and necessary that he should be cut off. In a letter he makes the remark that Bucer, as he says, "a mild-hearted man," has said of Servetus, "[He] is worthy to be rent in pieces, with his entrails torn out." To his friend Farel he wrote that if Servetus ever got to Geneva, he would do his best that he should not leave the town alive. Between the two men was repugnance arising not only from difference of opinions, but from characters radically hostile to each other. Passage after passage in the *Institutes* may be found wherein Calvin breathes out his hatred of Servetus's teaching and the man himself, his gross and foul errors, his "devilish error."² I may be wrong, but I do not think we shall understand the trial aright if we do not see that Calvin felt that this was a bolder and more dangerous foe than any he had fought with. Servetus had between 1546 and 1548 corresponded with Calvin, at the outset, it may be, with some wild hope of convincing the reformer of his errors. The controversy had degenerated into recriminations and abuse creditable to neither, though very much after the manner of the time, and had closed in fierce anger. It was no mere literary quarrel, turning on bad latinity, or a wrong reading of a passage, or plagiarism. The correspondence breathes mutual repulsion. That impression is confirmed by the many references to Servetus in Calvin's *Institutes*. Of no one does he speak with so much bitterness "Deadly monster,"³ "beware of the devilish imagina-

¹ 1553. Calvin had heard of the mischief which Servetus's writings were doing in Italy and elsewhere. *Opera*, xiv. 577 (in *Corpus Re ormatorem*, vol. xli).

² Calvin, *Institutes*, i. 15, 5.

³ *Ibid.*, ii. 14, 5.

tion of Servetus,"¹ "devilish error," "madness,"² "a vastly worthless fellow."³ Such are some of the expressions.

Calvin had retained Servetus's letters; and, when requested by Trie to put them at his disposal for the purposes of the prosecution, he forwarded them to Vienne. Opinions may differ as to his share in the trial and condemnation of Servetus. There can be but one as to his gratuitously supplying information to the Inquisition, and putting at its disposal letters sent to him *sub sigillo*.

Against these all the evasions of Servetus could not avail. Yet some of his judges, it would seem, were not over-anxious to sacrifice him. Whether they feared that they themselves might be compromised, or whether they felt some reluctance to act as Calvin's executioners, they kept but a negligent watch over their prisoner, and on the 7th of April he escaped. Now that he had gone there was nothing to be done but condemn him *in absentia*, and condemned he was.⁴ On the 17th of June his effigy and his books were burnt in the market-place of Vienne.

Meanwhile Servetus was wandering through France in search of refuge. It would appear that he tried the Spanish frontier but failed. Accordingly he made for Italy, and in doing so determined to take Geneva by the way. Why he should have done so is one of the unsolved riddles of history. He knew all along that Calvin had set the Inquisition on his track, and no satisfactory explanation has yet been suggested for the strange aberration which placed him in the hands of his greatest enemy.

To Calvin we must now turn.

Born at Noyon in Picardy in the year 1509, Calvin had, like Servetus, been trained in the Law, but the spread of the Reformation had turned his thoughts

¹ Calvin, *Institute*, ii. 9, 3. ² *Ibid.*, i. 15, 5. ³ *Ibid.*, ii. 10, 1.

⁴ The sentence against Servetus by the Vienne Court is proved by Allwoerden, *Historie van Michael Servetus*, p. 57.

to Theology. As the France of Francis I was no safe place for Protestants he fled to Switzerland, and in 1536 settled at Geneva, where, but for an exile of three years, he was destined to spend the rest of his life. Political conditions were favourable, and accordingly, in spite of considerable opposition from dissentients in the city, he was enabled to put in practice that ideal constitution of the Church which at the early age of twenty-five he had developed in the *Institutio Christianæ Religionis*, which gave to Protestantism that cohesion and organization which were to be so valuable in its struggle with the Counter-Reformation. He has been compared to Ignatius Loyola, but in the latter are elements of mysticism and signs of imagination unknown to Calvin. I think of him as one of those types of lofty austerity which France of all countries seems to produce—the Arnaulds and Pascal, the Jansenists and the Huguenots.

His position in 1553 was exceptionally difficult. The Senate was against him. His opponents in the Council of Two Hundred were hopeful of breaking the political power of the Clergy by excluding them from the General Assembly. In that year Calvin writes despondently, "Wickedness has so burst forth that I hardly hope any sort of position can be kept for the Church any longer, particularly for my ministry."¹ Among his chief opponents was a clever and brilliant member of an old family, Amied Perrin, then First Syndicus and General Captain; formerly a friend of Calvin; one who had much to do with Calvin's recall from exile, but now classed as foremost among the *méchants*. Calvin and Perrin could not reign together. One must yield. It was not to be Calvin, though in 1553 it looked as if this might be.

On the 12th of August Servetus arrived at Geneva, putting up at the Golden Rose Inn. He remained there apparently unknown. But, as the story goes, having entered St. Peter's Church, he was recog-

¹ P. Henry, *Das Leben J. Calvins*, iii. 95 n.

nized. He had intended to take a boat next morning and to go to Zurich on his way to Naples. But in the evening of the 13th of August he was arrested. Calvin admitted that he had brought this about.¹ He saw a chance of this monster of wickedness meeting his deserts. It was not to be missed.

"Nevertheless, since he had been driven hither by evil influences, one of the Syndics at my instigation ordered him to be taken to prison; neither do I conceal that I considered it part of my duty to repress as far as in me lay this man, more than stubborn and wild, lest he should infect further with his contagion."²

I am afraid that from the outset he³ meant to slay Servetus. A week after the arrest, Calvin writes to his friend Farel,⁴ "I hope there will be a capital sentence at least: however, I want the extreme harshness of the penalty to be omitted." It is ridiculous to say, as some apologists have said, "Calvin did not in the least intend to inflict on him the death-penalty."⁵ That was just what he wanted to do.

The nominal prosecutor was La Fontaine, who was a mere dummy, the mouthpiece of Calvin; according to some, Calvin's cook,⁶ according to others, a domestic servant, according to others, a servant and secretary. By the law of Geneva it was required that: (a) the grounds for an arrest must be declared within twenty-four hours, failing which the person accused was released; (b) all criminal charges must be made at the instance of some one aggrieved; (c) the prosecutor must be bound over to prosecute; (d) he must also go to prison with the person accused, and in conformity with the *Lex Talionis* agree, if the charges were not made good, to undergo the penalty which would befall the accused if found guilty.⁷

¹ P. Henry, *Das Leben J. Calvins*, iii. 151.

² Quoted by Henry, iii. 151. ³ Kampschulte, ii. 182.

⁴ 20 August 1553.

⁵ Henry, iii. 153.

⁶ Willis (R.), *Servetus and Calvin*, p. 305. ⁷ *Ibid.*

Accordingly La Fontaine and Servetus were both handed over to the jailer (Jehan Grasset), who had to answer with his life for their custody. The law further required that the accuser should appear the same day, a rough substitute for a writ of habeas corpus. Accordingly, on the 14th of August, La Fontaine appeared before the Small Council.

I shall have something to say as to the legal peculiarities of the trial; the many strange irregularities, the defiance of forms, the licence claimed and obtained by Calvin. The lawyer is struck by the confusion and medley of the proceedings and the licence accorded to the prosecution. But to the eye of the penetrating historian, I do not doubt that there is a certain completeness in the story from first to last.

In some trials, certainly in those which I have chosen, there is (may we not say?) a drama played on a large stage, not "imitation of an action grave, complete, and of a certain magnitude," but such action itself, played before our eyes; an inward principle revealing itself in an outward whole; ¹ incidents of life connected by an inward or causal bond; ² movement and tumult of strong passions; fierce contentions ending in an inevitable and impressive close; time doing for the narrative what the poet does for his own creation. The unimportant and meaningless incidents are hidden, so that to him who sees it all from afar are visible only the protagonists, the great incidents and actions. For him the trial is a drama, and one strictly conforming not only to the unities of time and place, but to the more important unity of action. So much may be said of this trial. To-day, petty incidents becoming invisible or falling into the background, it is seen to be a struggle between two forces eternally warring, the theocratic and the secular, the logical and the fantastic nature; a

¹ Butcher (S. H.), *Aristotle's Theory of Poetry*, p. 270.

² *Ibid.*, p. 271.

struggle with varying incidents between the representatives of two orders of thought, between the old and the new. And as is often found in great literature, there is running through the chief drama a minor story, that of the struggle between the political parties in the state with Perrin and Berthelier on the one side and Calvin on the other. The first scene is at a waterside inn in Geneva, the last is on the field at Champel, where the heretic perishes.

I resume my brief account of the long and somewhat complex proceedings.

14 August 1553. Nicholas La Fontaine appeared before the Lieutenant Criminel of the city and preferred certain charges against Servetus and called for an answer.

The mention of that functionary reminds one that the organization and procedure were akin to those of France. The *baillis* and *sénéchaux* of the local jurisdictions were replaced by the representatives of the King. They were permitted to nominate lieutenants, at first removable :

"but fact became law. The lieutenants became officers of the judicature whom the *baillis* could not remove." ¹

"The judgment of criminal causes fell to the *lieutenant criminel*. In our ancient law he was the judge, with the duty of repression, for all important matters withdrawn from the *prévôts*." ²

The indictment took the form of thirty-eight articles, a long and discursive document, prepared, we know, by Calvin.³ Most of the charges were based upon Servetus's books, *De Trinitatis Erroribus*, and *Christianismi Restitutio*. Article 37 alleged that in the latter book he had made use of scurrilous and blasphemous terms in speaking of Calvin and the doctrines of the Church of Geneva.⁴ The object of

¹ A. Esmein, *Histoire de la Procédure criminelle en France*, etc., p. 34.

² *Ibid.*, p. 35.

³ Henry, iii. 154.

⁴ Article V.

the introduction of this count has never been clearly explained, but I hazard this conjecture. It was not so much that it was high treason or *lèse majesté* to speak disparagingly of Calvin. The legal advisers of Calvin may have seen difficulties in convicting Servetus of any crime committed within the territory of Geneva; it might prevent failure to prove that within the protection of its law he had slandered or libelled someone.

The preliminary charges or information having been heard, the next step was for the Lieutenant Criminel to communicate this to the court composed of the Syndics of the city and the Council. Then came (15 August) the hearing of the case, which began before the Syndics and the Council. The prosecution demanded that Servetus should be put on his trial for heresy and blasphemy, and also for wicked calumnies circulated against true servants of God, more especially Monsieur Calvin. He had answered yesterday in a frivolous manner to the questions put to him. Let him be required to answer formally to each of the articles in the charges. The court, having decided that a *prima facie* case was established, adjourned till the afternoon, when the trial began in earnest in the bishop's palace. Servetus was questioned as to his past. There was much theological discussion, ending on the whole in the triumph of the prosecution.

16 August. Philibert Berthelier takes his seat as assistant to the Lieutenant, while Colladon acts as counsel for La Fontaine. There is fierce strife between Berthelier and Colladon; the quarrel assuming the appearance of one between Calvin's party and Berthelier's, Servetus the prisoner being the cent. of a fight for supremacy in the State. Colladon La Fontaine produce the writings of Melancthon Œcolampadius in which both reformers condemn prisoner's writings.

17 August. Calvin comes forward, avows hims

the real accuser, and complains of Berthelier's intervention. An extraordinary thing is done; he is permitted not only to appear at the next hearing, but to see the prisoner, therewith the better to show the accused his errors; to assist him and to do what he could with him in respect of his errors. Marvelous mixture and confusion of parts! The Court has not well begun its sittings before the accused is virtually treated as guilty. He is to be admonished before he is tried.

More theological discussions; bold avowals by Servetus of his opinions.

17 August. The prosecution takes suddenly a new form; the carriage of it is handed over to the Procureur-Général of the city, Claude Rigot. Nicolas de La Fontaine and his surety are discharged. The prisoner is cross-examined closely as to his life and opinions. His heresies become more apparent from his answers and he is no longer confident and arrogant. Calvin, on the other hand, thinks that all is going well. On the 20th of August he writes his letter to Farel: "I hope there will be a capital sentence at least: however, I want the extreme harshness of the penalty to be omitted."

21 August. There is a new development of this strangely changing case. Apparently there was a minority of the Council prepared to stop the proceedings. But on that day it was resolved, "Inasmuch as the heresies charged against Michael Servetus appear to be of great importance to Christianity," to continue the prosecution, and also to write to the Inquisition authorities at Vienne in order to ascertain upon what grounds Servetus had been imprisoned and prosecuted, and how he had escaped.

The strangest decision of all, at least from the point of view of the lawyer, it was decided to lay the facts before the Councils of the cities of Berne, Basel, Zurich, and Schaffhausen, and the ministers of their churches, and to take their opinion. This had been

done in the case of the prosecution of Bolsec, with the result that his life was saved, though his doctrines were condemned.

23 August. Again there is a complete transformation of the prosecution. A new indictment, consisting of thirty articles, no doubt in part, if not the whole, the work of Calvin, is laid before the Court. The charges differ very much from those originally formulated, and betray, I am inclined to think, a consciousness of the weakness of the case as first presented. Less is said of the heresies of the accused, more stress is laid upon the dangerous tendencies of his teaching. There are insinuations against his life. "The theological element in the prosecution is almost entirely abandoned for denunciations of the socially dangerous nature of the prisoner's doctrines and his persistence in their dissemination."¹ It is a significant fact that the charge of slandering Calvin, to be found in the first indictment, did not reappear in the second. His enemies were dwelling upon the fact that it was solely Calvin's affair, one more attempt at aggrandisement on his part, and it was politic to drop this count.

Yet again another anomaly in this wonderful prosecution. Calvin, possibly thinking that Servetus might escape, denounces him from the pulpit as a public enemy. No one thought, so far as we know, that this was wrong, no one rebuked him for this conduct. And, again playing a part from which sensitive scrupulous men would have shrunk, Calvin is writing to his friends at Frankfort to get information which may be used against "this wild beast from hell."²

31 August. There came a slight hitch in the proceedings. From the Court of the Inquisition at Vienne was received a point-blank refusal to send the documents asked for. There was also a request by that Court for extradition of Servetus and his sur-

¹ Willis, p. 352.

² *Ibid.*, p. 346.

render to the Court from whose prison he had escaped. Had Calvin been desirous that the heretic should be punished, but that he and his should have no part therein, they would have seized this opportunity. There is no evidence that they supported this request. The probability is that they did not. At all events the answer was, "According to our old customs we do not deliver up a criminal once he has come into our hands until he is acquitted or condemned."

1 September. Again another surprise. The proceedings are for a time turned into a dialectical duel between the two antagonists, the lawyers and the Court standing aside to hear quotations from the Fathers bandied to and fro.

At this point let me parenthetically advert to a circumstance which seems to us strange and unjust, but which was not then so regarded. Servetus had on the 24th of August asked for an advocate to defend him, a request so reasonable, one might have thought, as to admit of no denial. It was, however, met with a refusal, concluded in terms which sound in our ears brutal. But, in fairness to the prosecution, let us remember that a condition of a fair trial deemed now essential, the right of being represented by counsel, was not then recognized. The Roman law had admitted it only in a few cases. The laws of procedure founded thereon did the same.

I cannot even summarize the long and wearisome proceedings. I pass over several sittings and come to the 5th of September, when the trial is resumed. Again, to the legal mind there is a marvellous change. The Attorney-General or Procurator General steps aside, and the examination of the prisoner is conducted in Latin by Calvin; and what an examination! What licence on the part of both accuser and accused. "It is impossible," breaks out Servetus, "not to admire the impudence of the man who is nothing other than a disciple of Simon Magus, arrogating to himself the authority of a doctor of the

Sorbonne, condemning everything according to his fancy." "Liar," "calumniator," "homicide," are recurring phrases in this long theological brawl.

Yet another gross irregularity. The Council having resolved to consult the Swiss churches and ministers, Calvin writes letters urging them more or less directly to answer in the terms which he desired. To quote one of these epistles, "There is but one thing more on which I would have you advised, viz.: That the Quæstor of our City, who will deliver you this, is of a right mind in the business, which is that the prisoner shall not escape the fate which we desire."¹

By the 19th and 23rd of October the answers of the Councils of the cities and the Swiss clergy have come in. They are all hostile to Servetus's views; they condemn these as heretical and blasphemous. They refrain from advising that he should be put to death. But there is no word of toleration, no expression of pity, no plea for mercy.

26 October. We are nearing the end. On that day the Council was convoked to consider the sentence. Amied Perrin sought to avert the death sentence; he sought also to carry the matter from the General Council to the Council of Two Hundred. But to no purpose. By a majority the Court decided as follows:

"Having a summary of the process against the prisoner, Michael Servetus, and the reports of the parties consulted before us, it is hereby resolved, and in consideration of his great errors and blasphemies, decreed, that he be taken to Champel and there burned alive; that this sentence be carried into effect on the morrow, and that his books be burned with him."

Faltering at first, he was in the end calm and brave. His last heard words were, "Jesu, Thou Son of the eternal God, have mercy upon me." Calvin had none; Calvin's friends had none. That very day,

¹ Willis, p. 434.

writing to Farel, he remarks with respect to the efforts of Perrin to save the prisoner from death: "Our comical Cæsar, having feigned illness for three days, mounted the tribune at length with a view to aid the wicked scoundrel to escape punishment. Nor did he blush to demand that the cause might be remitted to the Council of the Two Hundred. But all in vain, all was refused, the prisoner was condemned, and to-morrow he will suffer death."

And to-morrow he did so suffer, with circumstances of horror which I will not describe.

The fire was lighted at a high place at Champel, so, as it was said, that the flames might be seen from afar. They have been visible ever since. And when all was over, no expression of pity, far less of contrition; no abatement of the fury, which was perhaps natural when the contest was doubtful.

No expression of pity, far less contrition. Calvin visited Servetus in prison and speaks of the "brutish stupidity of the man." A little later he writes to his friend Bullinger: "If I have but a little leisure, I shall show what a monster he was;"¹ and this he set himself to do in a book published in Latin and French, entitled *A Defence of the Orthodox Faith concerning the Holy Trinity against the Errors of Michael Servetus*. There is no expression of sorrow, but I think I detect uneasy consciousness of the need of explanation. "All the world knows that since he was convicted of his heresies I never moved to have him punished by death." It was unnecessary. He had long ago moved enough, laboured so hard for the fatal end, that more was not needed. All from Calvin's point of view was successful. His rule was firmly established; this monster of wickedness in his path was removed. He had said that if Servetus came to Geneva he would not leave it alive, and he had had his way. His chief enemies in the State, Berthelier and Perrin, were discomfited. All was

¹ Willis, p. 499.

cleverly done. Machiavelli would have praised the thoroughness.

I do not know that we realize the significance of all the facts; we do not see that the exile of Bolsec, the death of Gouet, and the burning of Servetus were steps by which Calvin secured his power.

To the lawyer the trial from first to last is an amazing medley, confusion, and vacillation, denoting determination to attain a conviction without clear perception of how to do it—first one prosecutor, then another, then a third, and in the end Calvin, without any official position, dominating the proceedings; first one set of charges, including a count for slander of Calvin; these withdrawn or dropped, without, as might be expected, a verdict or judgment of acquittal being pronounced in favour of the prisoner; then a totally new set of charges substituted; the arguments in Court not confined to the issues thus raised, but allowed to wander into all sorts of theological discussions, and to degenerate into rude personalities; the Court abdicating its functions and taking the opinion of various cities and individual pastors; the real prosecutor, Calvin, in the course of the trial and at a critical point therein, haranguing the people and denouncing the accused, and by letters and otherwise seeking to influence the referees or assessors; the sentence, too, not strictly founded on the charges, but vague and declamatory, and in it no finding as to an offence committed within the territory of Geneva.

To show the straits to which the Court was put in finding reasons for its judgment, it may be stated that among the grounds mentioned were :

“for having perfidiously broken and escaped from the prison of Vienne, where he had been confined because of the wicked and abominable opinions expressed in his book; item, for continuing obstinate in his opinions, not only against the true Christian

religion, but as an arrogant innovator and inventor of heresies against Popery, which led to his being burnt in effigy at Vienne along with five bales of his book."

Fancy Calvin pursuing a man to death for breaking out of the prison of the Inquisition!

It was actually made a ground for his condemnation that he had defended in court his wicked opinions. Such were some of the reasons for burning him, so that the world should be no longer infected with his "scandalous, heretical poison."

One question put by every lawyer will be—"What crime against the laws of Geneva was committed?" At this time there was no doubt as to what was the rule as to jurisdiction. The subject is discussed by Matthæus.¹

He quotes the opinion of Baldus:

" . . . [That] a judge cannot inquire into a crime committed on alien territory unless the injured party invokes the aid of his court, which opinion several confirm by this argument: the trial of the crime belongs to him in whose territory it was committed for the reason that it is his jurisdiction that has been flouted; but anything that has been done in alien territory causes him no wrong. You can perhaps prove this reasoning in lighter charges: in more serious ones or those of shameful nature, never. For it is in the general interest that wickedness should not go unpunished: but they will easily escape if accused persons are allowed to defend themselves by some quibble of the market-place. . . .

"Except that if the governor of that district wherein the crime was committed asks that the accused be handed over to him, he is to be handed over with a suitable escort; for it is just that a conspicuous example should be made in that district in which any evil deed has been done."

¹ Matthæus, *De Criminibus, De Inquisitione*. ch. ii, sect. 8.

Calvin was a trained jurist. Law had been his first study. His mode of reasoning and the complexion of his style bear marks of his knowledge of Roman Law. Indeed, the lawyer reading Calvin's *Institutes* must regret that the author was lost to jurisprudence. Now it is hard to believe that a trained jurist such as Calvin did not see that he was the prime mover in proceedings hopelessly irregular. I have had to describe two great trials conducted in a democracy for similar offences—one that of Socrates for *asebeia*, the other of Servetus for heresy. The comparison between them is all to the honour of the Athenian tribunal. The sentences in both were errors; but in the trial before the Athenian heliasts were none of the elements of brutality, savagery, and personal spite conspicuous in the other. In the theocratic democracy there may have been a higher standard, but the trial speaks of a lower life.

In those days Geneva was more theocracy than democracy; and it may be that a theocracy in all its forms, crude or refined, calls for human sacrifice, some offer of blood on an altar or in a court. The sacrificial priest and the executioner alike are, in Bourdaloue's phrase, "the ministers of divine justice."

It has been said in palliation that Calvin was only of his time—the blank pardon served out in respect of every deed of violence; an admission that he, a great moral teacher, was not in advance of his time. In truth he was too much of his own age, more so than Zwingli, for example, and false to his early principles. He was commentator on Seneca's *de Clementia*: in the first edition of his *Institutio* were words of rebuke of persecution, in the last chapters of that work noble words as to justice; and it was an unseemly sequel that he should hound to death one whose very turbulence and vehemence were signs of sincerity.

Let me make one more remark suggested by this trial and by others. There is no accepted test of

civilization. It is not wealth, or the degree of comfort, or the average duration of life, or the increase of knowledge. All such tests would be disputed. In default of any other measure, may it not be suggested that as good a measure as any is the degree to which justice is carried out, the degree to which men are sensitive as to wrongdoing and desirous to right it? If that be the test, a trial such as that of Servetus is a trial of the people among whom it takes place, and his condemnation is theirs also.

VII. TRIALS FOR WITCHCRAFT

I TURN to an entirely different class of trial, quite unlike those which I have hitherto described. In them was generally present a political element; the State was somehow concerned; a conviction was thought essential for dynastic or State reasons. The alleged crime was a crime, something which we still regard as such. At the suggestion of some friends I have chosen examples of trials of a kind now obsolete. I mean trials for sorcery or witchcraft. They may not at first blush seem to possess interest or to be instructive as to the history of legal procedure. Such is not, of course, their chief interest. But they deserve, as I hope to be able to prove, to be studied by the lawyer and in connexion with procedure. They throw light on the value of rules of evidence. They prove in an impressive manner, and as no other trials could, the insufficiency and untrustworthiness of confessions, deemed by the canon law as the most convincing and only conclusive proof. They reveal defects in procedure regarded as means or as an instrument for eliciting truth. They show the liability of trial by jury to be abused in times of excitement. I must not, however, make too much of their value as elucidating the history of procedure. No doubt the main interest of such trials lies elsewhere. They are storehouses of folk-lore, of local usages, of facts interesting to the psychologist. I do not believe the retrospect entirely useless or a mere matter of curiosity to the lawyer. To the student of criminal law it is for several reasons edifying. In the ordinary books much is said of epidemic crimes, *i.e.* crimes which are freely imitated; crimes which,

once become common, by this circumstance became still commoner. The prosecutions with which we are concerned belong to what for want of a better phrase I may call epidemic prosecutions; a multitude of prosecutions for imaginary crimes; one group of prosecutions engendering and facilitating another, and, strangest phenomenon, leading imaginary criminals very often to make imaginary confessions and even to feel remorse for offences never committed and impossible to commit. The epidemic brought about the cruel death of hundreds, nay thousands, of innocent persons, for the most part women; many of them dying without the consciousness of innocence and inspiring the witnesses of their death with a feeling of hatred which no real crime called forth. The belief in witchcraft and sorcery is very widespread among savage tribes; a belief in the magical powers of nature is a common mental stage in culture. But it is somewhat humiliating to admit that only 300 years ago educated Europe was in this respect in a lower condition than any part of savage Africa. No race of savages has, so far as I am aware, been so imbued with a belief in the omnipresence of witchcraft, none so domineered by witch-doctors and witch-finders as were the Scotland of Knox, the England of Shakespeare and Bacon, and the Germany of Albert Dürer and Luther. If I qualify that statement, it is by saying that nowhere, so far as I can find, has there been such an organization designed to search out and put down by cruel methods witchcraft and sorcery; and that nowhere has there been discovered belief in so malignant a form of witchcraft and consequently none so calculated to excite hatred of its supposed professors and practitioners.

Even in the days when it was most prevalent the epidemic did not extend to all European countries. It was rare in the southern parts of Europe. It did not spread to Mohammedan populations, though, as is well known, forms of magic are prevalent there. It

is significant that there is only one authentic instance of the burning of a witch at Rome in the fifteenth century,¹ that is, at a time when they were being burnt by the hundreds in Germany and England.² In fairness I ought to add that the *Malleus Malificarum*, the handbook of inquisitors, was compiled at Rome in 1489.

The epidemic for a time prevailed in both Catholic and Protestant countries. It raged in Protestant Scotland. It raged in Catholic Bavaria. Few presumed to question the basis of the superstition; the wisest took for granted that the beliefs of the ignorant on this subject were in substance well founded. The movement went on alongside the Renaissance. If it was not fostered, it was not checked thereby. It was a modern epidemic.

Antiquity knew nothing of such outbursts of terrified ignorance.³ It lasted from the fifteenth to the middle of the seventeenth century. It was probably at the height of its virulence at the end of the sixteenth century. The bulk of the prosecutions fall in European countries within a space of about 250 years, a period marked by great intellectual activity and by important scientific discoveries, a period embracing the beginning and the culmination of the Renaissance. What is the explanation of these two centuries at once of blindness and infatuation and of growing enlightenment?

No doubt one obvious cause was the fact that since the sixteenth century in several countries jurisdiction

¹ L. F. A. von Pastor, *Geschichte der Papste*, i. p. 231.

² "Real witch-burnings are unknown at the end of the sixteenth and in the seventeenth centuries," N. Paulus, *Hexenwahn und Hexenprozess, vornehmlich im 16. Jahrhundert*, p. 260.

³ It is true that the exercise of magic—black magic—was treated as a crime, partly owing to its supposed close connexion with poisoning. The XII Tables contain provisions directed against magic. Plin., *Nat. Hist.*, xxx. 3; Apuleius, *Apologia*, s. 47.

over witchcraft had passed to the secular courts;¹ it was no longer a merely ecclesiastical offence. The Inquisition had treated sorcery and witchcraft as forms of heresy, a conception to which Goethe gives expression in the second part of *Faust* when the Chancellor exclaims: "They're heretics and wizard-captains! And town and country they corrupt."² By and by, and especially about the sixteenth century, the secular Courts began to punish it. Thus in Germany the *lex Carolina* (1532) made it, where harmful, an offence punishable by the secular arm with death by fire.³ No doubt this multiplied the prosecutions. The fact which I have stated is not a full explanation of the origin and spread of the epidemic at that period. It does not tell us why not merely the populace but princes, doctors, statesmen, ecclesiastics, cherished this delusion.

I have already had occasion in narrating the trials of the Knights Templars to say something of the history of witchcraft, and I would endeavour to elucidate a point which I then left obscure. At first witchcraft was mixed up with poisoning, not merely in the popular mind, but also in legal enactments directed against such offences. It was confounded too with practices not deemed harmful, the cure of the sick by people who had not studied medicine; the quack of the fifteenth century was a sorcerer. In course of time came a great change. The so-called white magic dies out. The black magic becomes more and more prominent.⁴ Witchcraft becomes separated too in the popular mind from magic as practised in all primitive communities. It had been the art of exercising power by means of the occult powers of Nature. It had been associated with the pagan popular beliefs. More and more do the mythological elements disappear. More and more does witchcraft,

¹ S. Riezler, *Geschichte der Hexenprozesse in Bayern*, p. 48.

² *Ibid.*

³ *Ibid.*, p. 137.

⁴ This is shown in *Faust's* career. Riezler, p. 161.

as it appears in court, become an affair of complicity with the devil. Witches are his servants. Their evil deeds are inspired by him. They owe their powers to him. They do his work, and are guilty because they do so. More and more is this belief in the complicity of witches with the evil one strengthened as time goes on. As Michelet ¹ remarks, it may be said that :

“ The *Malleus*, like all books of this kind, contains an extraordinary admission ; that the devil is gaining ground, that is, God is losing ; that the human race, saved by Jesus, becomes the prey of the devil. The latter develops from legend to legend.” . . . “ The devil is now popular and present everywhere. He seems to have conquered.” ²

I am not sufficiently acquainted with the literature of the subject to speak with confidence of all the causes of this change. But one of them was the spread of a theology which, destroying the old popular mythology, replaced it by a concentration of the malign powers of Nature in the personification of Evil. Riezler, speaking of the literature as to the devil which prevailed, says :

“ Apart from the writings on the casting-out of devils, the whole of the literature on the devil, which springs up with such dismal luxuriance from the middle of the sixteenth century, is a product of the theological ardour of the Protestant party.” ³

If asked to explain what crime they intended to put down by their cruel laws, the legislators and judges of the sixteenth century would have said, “ the crime of entering into unholy compacts with the evil one.” And what a vulgar Satan these trials reveal ! He is a malignant clown ; sly, an ill-conditioned boor who turns milk sour, makes the calves and cows to die, and shoots ague-twinges into the

¹ J. Michelet, *La Sorcière* (2^{me} ed.), 1863, pp. 190, 193.

² *Ibid.*, p. 203.

³ Riezler, p. 160.

bodies of his enemies. The old lubber fiend of Milton, "le petit démon du foyer,"¹ who pinched the maids and played boorish tricks, but still did kindly deeds, is changed into the malignant dark devil, full of lust and hatred, ever on the outlook to make human beings his slaves and tools, but working by low and vulgar tricks. And to think that this conception was common much about the time when Milton was creating his Satan, a Prince of Intellect, the incarnation of Pride, worthy product of the Renaissance! What a descent from this ennoblement of evil to the rustic lout, whose tastes were plebeian, who kept low company, who had midnight dances with abandoned old women, and who did his worst when he sent a hailstorm to destroy your crops or raised a gale of wind which kept the fishing-boats from going out, or drowned a few harmless mariners. For the prevalence of this belief very many persons were responsible; many things conduced thereto; notably the set of the theology of the time, the attention given to the Old Testament with its denunciation of witches, and the penalties prescribed for them, the prominence everywhere given to a personal devil. There can be little doubt that the epidemic caught on more readily in Protestant countries. There can, too, be little doubt—though the fact has been questioned by biographers—that Luther gave an impulse to the popular creed. That he believed in witchcraft is clear. That he thought women were particularly its agents is clear also.² He was all for severity. He jeered at the *iuristæ* who wanted too much evidence *contemnentes illa manifesta*.³ As he grew older he was more and more hardened in this belief. Nor is it a complete defence of him to say with his apologists that in this he did but continue medieval beliefs. As to so many things he had cast off its yoke. "Why did he leave just the witch-mania untouched?"⁴

¹ Michelet, pp 48 ff.

² Paulus, p. 28.

³ *Ibid.*, p. 38.

⁴ *Ibid.*, p. 45.

In these trials it comes out that each country has its own type of witchcraft; and to deal fully with the subject it would be necessary to examine many trials.

Unfortunately this difficult task has not been attempted. These trials have never been examined by writers conversant with the facts in several countries. I am unable to supply what is wanted. All that I can do at present is to take some illustrative examples from two countries, from Scotland and Germany. We shall find that the old mythologies have not entirely died out. In Germany there is much about the devil, who appears in all sorts of disguises and generally as a sort of rustic Mephistopheles. In the Scotch trials Elfinland is much heard of. The Queen of that country figures in the indictments and evidence. Not a few of the men and women who are put on their trial have been lured away by her and have for years lived in her Court. There and from her they have learned some part of their magical powers. In a remarkable fashion the Scotch trials show the confluence and confusion of popular mythology and of the theology of the time by the mixture of things incongruous, secular and profane, Christian and pagan, in uneducated minds. I have had great difficulty in making a selection—so vast are the materials. But I take first as a fairly typical example the case of Elizabeth or Bessie Dunlop, tried in 1576 in Edinburgh,¹ one of the earliest and strangest cases recorded. The dittay or indictment gives, what is rare, a minute account of the devices of this witch: the “Invocation of spretis of the devill; continewand in familiartie with thame, at all sic tymes as sche thocht expedient; deling with charmes, and abusing the peple with devillisch craft of sorcerie.’ The dittay or indictment—no doubt based, as Pitcairn remarks, on declarations or con-

¹ R. Pitcairn, *Criminal Trials in Scotland, 1488-1624*, i. Part 2, p. 49 (1576).

fessions elicited by means of exquisite tortures—was for :

“ the using of sorcerie, witchcraft and incantatioun . . . be the meanis eftir specefeit. IN the first, That fforsamekle as the said Elizabeth being demandit, be quhat art and knaulege sche culd tell diverse pert sounes of thingis thai tynt, or wer stollin away, o; help seik persounes? Ansuerit and declarit, thae sche hirself had na kynd of art nor science swa to dod bot diverse tymes, quhen onye sic persounes comd ather to hir, sche wald inquire at ane Thome Reial quha deit at Pinkye, as himselff affirmit; wha wr-, tell hir, quhen euir sche askit.

(2) ITEM, Sche being inquirit, quhat kynd of man this Thom Reid was? Declarit, he was ane honest wele elderlie man, gray bairdit, and had ane gray coitt with Lumbart slevis of the auld fassoun; ane pair of gray brekis, and quhyte schankis, gartanit abone the kne; ane blak bonet on his heid, cloise behind and plane befoir, with silkin laissis drawin throw the lippis thairof; and ane quhyte wand in his hand.

(3) ITEM, being interrogat, how and in quhat maner of place the said Thome Reid come to hir? Ansuerit, as sche was gangand betuix hir awin hous and the yard of Monkcastell, dryvand hir ky to the pasture, and makand hevye sair dule with hir self, gretand verrie fast for hir kow that was deid, hir husband and chyld, that wer lyand seik in the land ill, and sche new rissine out of gissane.

The foirsaid Thom mett hir be the way, healsit hir, and said, ‘ Gude day, Bessie ’; and sche said, ‘ God speid yow, gudeman.’ ‘ *Sancta Marie*,’ said he, ‘ Bessie, quhy makis thow sa grit dule and sair gretting for ony wardlie thing?’ Sche answuerit, ‘ Al-lace! haif I nocht grit caus to mak grit dule? ffor our geir is trakit; and my husband is on the point of deid, and ane babie of my awin will nocht leve;

and myself at ane waik point; haif I nocht gude caus thane to haif ane sair hart?' Bot Tom said, 'Bessie, thow hes crabit God, and askit sum thing you suld nocht half done; and, thairfoir, I counsell thee to mend to him: for I tell thee thy barne sall die, and the seik kow, or yow cum hame; thy twa scheip sall de to: bot thy husband sall mend, and be als haill and feir as euir he was.' And than was I sumthing blyther, fra he tould me that my gudeman wold mend."

Then proceeds the narrative:

"Thome Reid went away fra me, in throw the yard of Monkcastell; and I thocht he gait in at ane narow-are hoill of the dyke nor ony erlie man culd haif gone throw; and swa I was sumthing fleit."

So far a homely devil, on the whole kindly and respectable, with a command of pious phrases and disposed to give good advice. At the third meeting (details of the second are not given), which was at a place between her own house and the Thorntree of Damwstarnok, Thom promised her "bayth geir, horsis, and ky, and vthir graith, gif scho wald denye hir Christindome, and the faith sche tuke at the funt-stane.' The fourth time when she met him there were with him eight women and four men. She asked who the women were and she was told:

"Thai war the gude wychtis that wynnit in the Court of Elfame; quha come thair to desyre hir to go with thame: And forder, Thom desyrit hir to do the sam; quha ansuerit, 'Sche saw na proffeit to gang thai kynd of gaittis, vnles sche kend quhair-for!' Thom said, 'Seis thow nocht me, baith meitworth, claith-worth and gude aneuch lyke in persoun; and (he) suld make hir far better nor euer sche was?' Sche ansuerit, 'That sche duelt with hir awin husband and bairnis, and culd nocht leif thame.' And swa Thom began to be verrie crabit with hir,

and said, ' Gif swa sche thocht, sche wald get lyttil gude of him.' "

So far the dittay or counts in the indictment. She was interrogated, probably under torture, and the facts, if we may so call them, elicited, were these : that she had got from Tom a herb, that he

" gaif hir, out of his awin hand, anething lyke the rute of ane beit, and baid hir owthir feith, and mak ane saw (salve) of it, or ellis dry it, and mak pulder of it, and gif it to seik persounes, and thai suld mend " ; that she could tell nothing of the future except so far as Tom told her ; that she had told who had stolen certain articles of clothes and the coulthers of ploughs.

Such was a fairly common accusation, with its mixture of triviality and superstition. Of the trial nothing is known except that it had the usual ending ; the accused was found guilty ; she was probably sentenced to be carried to the Castle Hill to be there " wirreit at ane staik," *i.e.* strangled and her body burnt to ashes.

The accusations against witches were not always practices so harmless as this which I have just described. I take as example of another kind of charge, the case of Margaret Wallace,¹ charged, 20th May 1622, with witchcraft, sorcery, charming, incantation, soothsaying, abusing the people, before the Court of Justiciary composed of Colville of Blair, Justiciary, Lord Walter Stewart of Mynto, bailiff of the Regality of Glasgow ; assessors the Archbishop of Glasgow, Lord Innerteil, John Wemyss of Craigtoun.

The major premiss of the dittay was based on the prohibition against witchcraft contained in the 20th chapter of Leviticus and the 18th chapter of Deuteronomy. The acts laid to the charge of the accused were :

¹ R. Pitcairn, *Criminal Trials in Scotland, 1488-1624*, iii. 508

(1) That she having conceived deadly hatred of one Cuthbert Greg, in concert with another witch by

“ devillische Inchantment practizet be hir vpone him, he was visseit and grevouslie trubilit with ane strange vnnaturall and vnknawin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and thairby wes brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself.”

(2) That, being “ suspectit as the onlayer and causer of the grevous and heavie disseis,” she was sent for and came and took him by the “ shackle-bane,” *i.e.* the wrist, by one hand, laying the other upon his breast. When he was unable to lift his legs without help she urged him to rise, and by her sorcery practised upon him he was able to walk without help.

(3) That she being grievously sick sent to a witch (Cristiane Grahame), who was burnt for her devilries, and was cured by her.

(4) That she laid a cruel sickness upon a young infant; that she offered to cure the child; that the mother refused, saying that she could commit her bairn to God “ and nocht mell with the Devill or ony of his instrumentis,” and that thereupon Margaret Wallace most blasphemously and devilishly answered that Cristiane Grahame could as much in that errand in curing of the disease as if God Himself would come out of heaven to cure her, and albeit the death-stroke was laid on, she could take it off again.

(5) Further, that a Kristy Grahame had confessed that Margaret Wallace was art and part with her in her wicked deeds, and received from her some coloured silk and worset, for practising of witchcraft against persons to whom Margaret bore envy.

(6) That one Margaret Mure being heavily diseased with a strange and uncouth sickness, she between

11 and 12 hours under silence and cloud of night went with Christy Graham to the yard of James Fynlay and there practised for the space of an hour sorcery and witchcraft for the curing of the child and taking off sickness, and that same night the sickness was taken off the child.

(7) That having a grudge against one Alexander Boig she laid a cruel and fearful sickness upon a child of four years of age so that the child died in two days.

So much for the Scotch cases, of which I believe these cases are fair examples.

Summing up their characteristics I may say that they show a strange mixture of superstitions, a confusion of Christian and pagan beliefs; that they show the witches to have been often unlicensed practitioners of the healing art; that the offences laid to their charge included not only the casting of evil spells upon their victims, but the effecting of cures by unlawful means, and in all of them the devil is the principal figure.

The next case which I select as illustrative of the history of procedure is of a very different kind from any of these, though it is almost contemporaneous. It is that of the trial of the mother of the great Kepler; a trial which took place early in the seventeenth century (1615-21) at Leonberg in Wurtemberg. The documents have been preserved and were published for the first time, I believe, by Dr. Frisch in his *Opera Omnia* of Kepler.¹ The trial, apart altogether from the interest which it has in connexion with Kepler, had great effects.

The "Keplerin," as she was called, had not been fortunate in life; her husband, restless and thriftless, had left his home to go to the wars, and she followed him; they returned to their home, but he again left her and was not heard of, leaving her with four children, the eldest becoming the famous astronomer,

¹ J. Kepler, *Opera Omnia* (ed. C. Frisch), viii. 361.

Johannes Kepler. She had always been ill-tempered; soured and embittered by misfortunes, two of her children anything but a comfort to her, she became quarrelsome and was disliked by her neighbours. Her son the astronomer, who stood valiantly by her in the hour of need, was under no delusion as to her temper. He describes her as "small, meagre, swarthy, sharp tongued, quarrelsome, of evil mind,"¹ a disturber of the whole community and "a wild and chattering woman."² Her eldest son had gone to the Austrian Court. Her daughter had married and was no longer with her, and in her solitude she became morose and eccentric. Hearing in a sermon that it was the habit of various nations to drink from skulls to remind men of their mortality, she wanted to dig up the skeleton of her father, to take the skull, mount it in silver and send it as a present to her son, the astronomer. Her mother had dabbled in medicine. She did the same, accompanying her remedies with strange ceremonies. If she effected cures they were forgotten, her failures only were remembered. She used charms which did not cure and compounded strange potions which made people ill. The neighbours conceived a bitter hatred against Frau Kepler.

"Rumour is an evil," says Kepler,³ "than which none is swifter; for this suspicion spread at once among highly superstitious folk since they based their argument on the seventy years' age of my mother and on several of the faults with which my mother is burdened, which are lying, prying, violent anger, cursings, persistence in complaints, which vices at that age are very common in that place. . . . The more my mother, full of anger and rage, complained against the dregs of the people, the more she increased rumour and suspicions."⁴

¹ J. Keppler, *Opera Omnia* (ed. C. Frisch), viii, 361.

² *Ibid.*, p. 380.

³ *Ibid.*, p. 377.

⁴ *Ibid.*, p. 378.

He endeavoured to prevent her being put in prison, but failed.

One of her sons circulated evil stories about his mother. A neighbour set abroad the story that Frau Kepler had administered to her a *zaubertrank* (a magic potion). In the town was one of those horrible creations of the time, a *hexenspürer* (a witch hunter), Lutherus Einhorn, a fanatical pursuer of witches, whose motto was "To the stake with all old women." By torture he sought to extract from another witch admissions against Frau Kepler. He collected and magnified all the gossip against her. A formal complaint in forty-nine articles was lodged against her, the chief charges being that she had administered potions to various persons, that her son said she had killed a neighbour's calf, that she had said there was neither heaven nor hell. For years the case dragged itself indecisively along. Started in 1615 it was not really brought before the courts until 1619, when Frau Kepler was seventy-three years of age. To prove the charges against her some dozen witnesses were called. After the opening of the sitting her son, Johann Kepler, submitted a series of searching interrogatories, 122 in number, for the examination of the witnesses. He also prepared a masterly defence (*Exzeptions und Defensionsschrift*), in which he showed that the sickness and disease which his mother was supposed to have caused were natural maladies, at all events not attributable to his mother's powers. He does not attempt to deny the existence of witchcraft, and whatever may have been his own beliefs, no doubt he acted wisely. For Kepler himself was not a *persona grata* to the theologians of the time or unsuspected of heresy. His science, astronomy, was to the seventeenth century what geology was to the nineteenth, the battle-ground of the old and new faiths. Strange coincidence, about the time Galileo was in trouble with the Roman Inquisition Kepler was in trouble with the Tübingen

theologians. He was not at one with the Lutherans as to several points, particularly as to the Lord's Supper, and he had been excommunicated by the Stuttgart Consistorium.

Kepler confined himself to a close critical examination of the existence and the origin of the charges, a masterly dissection of the evidence. He tried, but tried in vain, to prevent his mother being imprisoned. He protested against torture being applied to a woman of seventy-four. The Court decided (10 September 1621) to take what seems to us a strange course; they were not to inflict upon her actual torture; but they were to make believe of doing so. Guarded by halberdiers she was to be brought into the torture chamber; the torturer was to be present ready to do his work; the instruments were to be shown to her; and she was to be questioned. So on the 28th of September the terrible comedy was gone through. I describe in a few words the scene, which has not so far as I know been portrayed by dramatist or artist.¹

Totally unconscious of the cruel trick played upon her and called upon by the judges to speak the truth, she answered with a clear voice, "I have nothing to confess. I know nothing of witchcraft and sorcery although I did spend my childhood in the house of some evil and criminal vagabond." She hoped, she said, her son would save her from the flames. Whereupon the judge burst out in furious tones against Kepler, who had himself wronged Holy Church and published unchristian books and predictions. Her answer was, "My son's knowledge and good understanding are gifts of God, and I rest upon Him; this will be my last word, even if I must give up my soul to God under the sufferings of torture." Then the judge shouted out, "Away with the witch to the

¹ J. Kepler *Opera Omnia* (ed. W. Frisch), viii. 549; the scene is much amplified by L. Gunther, in his work *Ein Hexenprozess*, pp. 73-8.

torture chamber": whereupon she was roughly hurried to an underground vaulted chamber. There were the judges, the physician that attended on such occasions, the executioners and all their hideous instruments. They showed her one by one these instruments, and told her they would be used. "Answer now, accursed witch, and save thyself from torture and thy soul from lies." "Do with me as you will, and, even if you take from me every drop of blood, I know of nothing to confess; rather will I die." She denied having done any one harm. "Which of you who are here to do an evil deed would counsel me to lie or compel me to tell an untruth? . . . I am certain of this, God will punish the witnesses who have brought me to this state of misery." Whereupon she fell on her knees to pray, asking God to make a sign that she had practised no sorcery, and then fainted away. The hideous comedy was at an end; she had stood the terrible ordeal. On the 3rd of October the court ordered her release, much to the disgust of the fanatical prosecutors who for six years had pursued her. On the 4th of November 1621 she was set at liberty. She, then seventy-four years of age, did not live long, probably not long enough to know that her trial had no small effect in opening men's eyes to the iniquities practised under cover of religion.

It is an ugly and repulsive story, some of the worst details of which I have passed over.

My belief is that neither in Scotland nor in England would she have escaped. The long-winded procedure, almost entirely in writing, the adjournments, the elaborate pleadings, the examination in writing of the witnesses were a bar to popular excitement.

To the jurist these cases have many points of interest, particularly as to procedure; and among such points are these:

(1) That the cases of prosecutions for witchcraft enormously increased when they became the subject

of proceedings in secular courts. That took place all over Europe, with the result that everywhere in all local courts many such prosecutions were instituted, and that their number was larger, particularly in remote parts where superstitions were most prevalent. We know that the ecclesiastical judges in some instances did their best to discourage such prosecutions. They had little control over the local courts, in which such proceedings became the easiest and most convenient mode of gratifying personal spite. It was the sixteenth-century form of boycotting.

(2) A second fact to be noted is that some of the ordinary tests of truth furnished no security against deception of judges and juries. Almost always the prosecutors tried to elicit, and to proceed upon, admissions or confessions. No doubt these were often obtained by cruel torture; torture particularly terrible in the case of witches in Scotland by preventing them day and night from sleeping, a method which was found more effectual than any other in breaking down obstinacy. Torture in some form was in fact inseparable from these prosecutions.¹

(3) Even if the prosecutors did not succeed in extracting admissions fatal to the accused they generally managed to wring from them by torture some statement which revealed the existence of accomplices; it is a characteristic of such trials that it was always assumed that there were accomplices; witchcraft was not a solitary but a gregarious crime.²

Upon this Riezler has some remarks of value.

"If we ask 'why this continual extension of prosecutions against a multiplicity of accused?' the

¹ Riezler, p. 150; P. Laymannus, *Processus iuridicus contra Sagas et Veneficos* (Cologne, 1629), pp. 15-16: Tit. II: "On what evidence the Judge may lawfully torture prisoners." Tit. III discusses the question whether the judge can proceed to greater extremities in sorcery than in other cases, and the answer is, Yes, he may. "For this offence of sorcery is so great and comprehensive that it includes in itself almost every other crime."

² *Ibid.*

answer is to be found in the application, which became more and more universal, of the principle that the accused must also be questioned about accomplices and companions and tortured until they name them. Among the various aspects of the witch-mania, the appearance in the trials of a belief in the excursions and assemblies of witches is peculiarly ominous. From all other charges—covenants or intercourse with the devil, or injuries to men and cattle—from all these nothing could be got to implicate anyone but the accused herself. On the other hand, the delusion of witch-rides and witch-meetings gave the judges a regular opportunity of asking questions about companions and confederates. It is repeatedly remarked in the minutes that it is improbable or impossible that a witch should not have become acquainted with other witches on these occasions.¹

(4) It would, however, be quite wrong to assume that these admissions were always the result of the application of torture; the strange fact is that they were often made voluntarily and freely. That was the experience of every country. I take again as an example the minute circumstantial confessions made by some of those accused of witchcraft in the north of Scotland in 1662.² One Isobell Gowdie gives, as she says, without any compulsion, a detailed account of her meetings with the devil and her entering into a compact with him, of her flying through the air, of her meeting the King and Queen of Fairies, of her going to midnight meetings in the form of a jackdaw, while others assumed the form of a hare or of a cat. She described and recited the rhymed charms, a mixture of pious phrases and unmeaning words, used by them to raise storms or to turn themselves into a cat, a hare, or a crow. She told how she shot elf arrow-heads shapen by the devil with his own hands :

¹ Riezler, p. 151.

² Pitcairn, iii. 602.

"That quihich troubles my conscience most, is the killing of severall persones, with the arrowes quihich I gott from the Divell. The first woman that I killed wes at the Plewgh-landis . . .; also I killed an in the East of Murrey, at Candlmas last. At that tyme Bessie Wilson, in Aelderne, killed on thair; and Margaret Wilson, ther, killed an vther; I killed also James Dick in Cannicavill. Bot the death that I am most of all sorrie for, is the killing of William Bower, in the Miltowne of Moynes; Margaret Brodie killed an voman, washing, at the Burne of Tarres; Bessie Wilsone killed an man at the Bushe of Strutheris; Bessie Hay in Aulderne killed an prettie mon called Dunbar, at the Eist end of the Towne of Forres, as he wes coming owt at an gaitt; Margaret Brodie in Aulderne killed on David Blak in Darnvay,"

and so on, in a string of homicides.

"The Divell gaw Margaret Brodie an arrow to shoot at him (the Minister of Aulderne) quhilke she did; bot it cam short; and the Divell cawsed tak it wp again. We desiret to shoot again, bot the Divell said, 'No; we wold not gett his lyff at that tyme!' The Divell cawsed me to shoot at the Laird of Park, as he was croceing the Burne of the Boath; bot I missed him."

Strangest fact of all, the accused were found to corroborate each other. Some of the accused had not the consolation of the martyr, the consciousness of innocence.¹ There is good reason to think that these victims of obsession did mentally enter into compacts; did have midnight meetings; did harbour evil designs; did seek in occult arts the gratification of malignant passions.² There was a basis of facts in these wild delusions, but judges, juries, and the victims themselves drew the wrong inferences from them. In view of these facts the late Sir James

¹ Riezler, p. 153.

² *Ibid.*, p. 157.

Stephen justified the action of the juries who found these wretched creatures guilty of foul crimes: "It is clear," he says, "that they could not have acted otherwise than they did, and that it would have been an unreasonable proceeding on their parts to enter upon what was then regarded as the fanciful speculation which denied that witchcraft ever took place."¹

If my reading of these stories is true, that is not the whole explanation of these judicial errors. All the neurotic, many of the insane or feeble-minded or hysterical or epileptic, found in the prevalent beliefs as to witchcraft ready-made forms or moulds for their delusions. It was as natural for them to think of themselves as witches as it is now for one who is at once vain and insane to think that he is a monarch or a millionaire. Indeed, more so; for then there were no competing superstitions. For them the delusion was, to quote a writer in the *Revue Philosophique*,² "un reve commandé et vécu" (a dream lived through by command). But that was not the entire explanation. Judges and juries and accusers were often influenced and blinded by fear, that greatest impediment to justice, a vague fear of the unknown; fear too great to permit of leniency or mercy. Then, too, judges, juries, and prosecutors and the whole population stimulated and suggested these delusions. As Bernheim says of modern phenomena not unlike those of the sixteenth and seventeenth centuries:

"Lawyers, preachers, professors, orators, merchants, charlatans, seducers, politicians . . . are all workers by suggestion. Political and religious fanaticism, nihilism, anarchism, boulangism, all gain recruits by means of auditive suggestion."³

¹ Sir J. F. Stephen, *A General View of the Criminal Law of England*, pp. 209-10, quoted in *Psychology applied to Legal Evidence*, G. F. Arnold, 1906, p. 248.

² *Revue Philosophique*, 1911, p. 229.

³ *Ibid.*, p. 235.

All concerned in these proceedings suggested to the accused what was vividly present to themselves. Many of them used these proceedings for their own private purposes. And in the reports there is a curious absence of all attempts to cross-examine the witnesses, to sift the truth in rumours, to discriminate between the confessions of the sane and the wild imaginations of those possessed with some delusion.

I have described several trials which show how courts of justice may be made by the State instruments of oppression. For all time the trials as to witchcraft are a warning that courts may fail to elicit truth and may do evil deeds if they seek to give effect to popular beliefs. The man in the street may be as wrong-headed and as cruel as the tyrant on the throne.

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